

v. 2803

No. 13312

In the
United States
Court of Appeals
For the Ninth Circuit

STATE OF WASHINGTON, *Appellant,*
v.
UNITED STATES OF AMERICA, *Appellee.*

UPON APPEAL FROM THE DISTRICT COURT OF
THE UNITED STATES FOR THE EASTERN DIS-
TRICT OF WASHINGTON, SOUTHERN DIVISION

APPELLANT'S OPENING BRIEF

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INDEX

Statement of the Pleadings and Facts Showing	<i>Page</i>
Jurisdiction	7
Statement of the Case.....	8
Question Involved	13
Assignments of Error.....	14
Summary of Argument.....	15
Argument	
I. Setting Aside Verdict.....	16
II. General Rule in Highway Condemnation..	19
III. Evidence Sustaining Verdict.....	24
Exhibits Rejected and Testimony Excluded.....	38
Conclusion	41
Appendix "A"	45
Appendix "B"	47
Appendix "C"	51
Appendix "D"	133

TABLE OF CASES

	<i>Page</i>
Bulette v. Bremerton, 34 Wn. (2d) 834 (836), 210 P. (2d) 408	18
California vs. U. S., 169 Fed. (2d) 914.....	20
City and County of Honolulu vs. U. S., 188 Fed. (2d) 459	20, 21
City of Fort Worth, Texas vs. U. S., 188 Fed. (2d) 217	20, 21, 41, 42
Hurst v. Peterson, 189 Wash. 169 (172), 64 P. (2d) 788	17
Jefferson Co. v. T.V.A., 146 Fed. (2d) 564.....	20
Moen v. Chestnut, 9 Wn. (2d) 93 (101), 113 P. (2d) 1030	18
Moore v. Keeseey, 24 Wn. (2d) 139 (140), 163 P. (2d) 164	17
Myer v. Little Church by the Side of the Road, 37 Wn. (2d) 897 (905), 227 P. (2d) 165.....	16
Neel v. Henne, 30 Wn. (2d) 24, 190 P. (2d) 775.....	18
Perkins v. Northern Pac. Ry. Co., 199 Fed. 712 (715) (9th Cir.)	18
Port Angeles Western Ry. Co. v. Tomas, 36 Fed. (2d) 210 (9th Cir.).....	18
Ruff v. Fruit Delivery Co., 22 Wn. (2d) 708, 157 P. (2d) 730	18
Smith v. Leber, 34 Wn. (2d) 611 (614), 209 P. (2d) 297	18
Smith v. Shevlin-Hixon Co., 157 Fed. (2d) 51 (53-54) (Ore.) (9th Cir.).....	18
State ex rel. Coyle v. Superior Court, 128 Wash. 460, 223 Pac. 3.....	29
Town of Bedford vs. United States, 23 Fed. (2d) 453	19, 41, 42
Town of Nahant vs. United States, 136 Fed. 273, 69 L.R.A. 723, Reaffirmed in 153 Fed. 520.....	19
U. S. vs. Alderson, 53 F. Sup. 528.....	21
U. S. v. Arkansas, 164 Fed. (2d) 943.....	20

TABLE OF CASES—*Continued*

	<i>Page</i>
United States vs. Des Moines County, 148 Fed. (2d) 448	19, 20, 21
U. S. vs. Los Angeles County, 163 Fed. (2d) 124....	20, 21
U. S. v. N. Y., 168 Fed. (2d) 387.....	20
United States vs. Wheeler TP, 66 Fed. (2d) 977....	19, 20
Wilcoxon v. Seattle, 32 Wn. (2d) 734 (737), 203 P. (2d) 658	17
E. K. Wood Lumber Co. v. Anderson, 81 Fed. (2d) 161 (166) (9th Cir.).....	18

TABLE OF STATUTES

26 Stat. 316	8
40 Stat. 241	8
40 Stat. 518, 50 U.S.C. Sec. 171.....	8
57 Stat. 14	38
28 U.S.C.A. 1241, 1244 (62 Stat. 629, 930).....	8
28 U.S.C.A. 1358, 1403 (62 Stat. 935, 937).....	8
40 U.S.C.A. 257 (36 Stat. 1167).....	8
40 U.S.C.A. 258a	8
U. S. Constitution, Amendments 5 and 14.....	19
Public Law 507—77th Congress.....	8
Public Law 649—77th Congress.....	8
Chapter 53, Section 25, Laws of 1937, p. 146 (Rem. Rev. Stat. 6400-25) (RCW 47.12.010).....	27
Chapter 53, Section 31, Laws of 1937, p. 152 (Rem. Rev. Stat. 6400-31) (RCW 47.28.010).....	27
Chapter 169, Laws of 1939.....	39
Chapter 207, Sec. 12, Laws of the Legislature of Washington, 1937	21, 22
Chapter 207, Sec. 20, Laws of 1937, p. 1012 (Rem. Rev. Stat. 6402-20) (RCW 47.04.030).....	28

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STATEMENT OF THE PLEADINGS AND FACTS
DISCLOSING JURISDICTION

The Petitions for Condemnation (Tr. 3, 26), the letters of the Secretary of War (Tr. 10, 33), and the Declarations of Taking (Tr. 12, 37) show the nature of this action to be one for the condemnation of real property. The property described therein is situated within the Eastern District of Washington, Southern Division. Under the statutes pertaining thereto this action is properly brought in the United States District Court for the Eastern District of Washington, Southern Division.

The action was commenced by the United States of America on July 21, 1943. Under 40 U.S.C.A. 257 (36 Stat. 1167) jurisdiction was specifically granted to the United States District Court to hear such action. (This Act was amended in 1948, and the jurisdictional provisions are now found in 28 U.S.C.A. 1358 and 1403 (62 Stat. 935, 937).)

This action was in accordance with the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316) as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U.S.C. sec. 171), and March 27, 1942 (Public Law 507—77th Congress), which Acts authorize the acquisition of land for military purposes, and the Act of Congress approved July 2, 1942 (Public Law 649—77th Congress), which Act appropriated funds for such purposes, and the Act of Congress approved February 26, 1931 (40 U.S.C.A. 258 a).

Provision is made in 28 U.S.C.A. 1241 and 1244 (62 Stat. 629, 930) for appeal from the judgment entered in the United States District Court for the Eastern District of Washington to the Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE

Acting by and through its Attorney General and his assistants, on July 21, 1943, the United States of America, in the United States District Court for the Eastern District of Washington, Southern Division, filed a Petition for Condemnation and Declaration of Taking, for the acquisition of fee title to that part of Secondary State High-

way 11 A then being owned, operated and maintained by the State of Washington through its Highway Department. Such highway extended generally easterly and westerly through the area then being acquired by the United States for what has subsequently been designated as the Hanford Atomic Energy Project. (Tr. 1 through 18)

Order on Declaration of Taking granting to the United States immediate use and possession of said highway was entered and filed on July 23, 1943. (Tr. 21 through 27)

Thereafter on March 2, 1944, an amended petition for condemnation and Declaration of Taking No. 2 were filed by the United States in said cause (Tr. 27 through 41) wherein additional portions of the aforesaid Secondary State Highway 11 A were sought.

Order on Declaration of Taking No. 2 was entered by the District Court and filed in said cause on March 18, 1944. (Tr. 42 through 44)

United States authorities closed said secondary state highway to the public, thus preventing all public use thereof prior to or currently with the filing of the first declaration of taking (July 21, 1943), and said highway up to the time of trial had remained and still remains closed to public use. (Exh. 10, Appendix "C," Pages 51-53)

The section of the said secondary state highway taken from the State of Washington by the United States in this case was approximately twenty-eight miles in length. (Tr. 225)

Immediately upon the closure of said highway and the taking of the aforesaid twenty-eight mile closed por-

tion thereof, the officials of the Highway Department of the State of Washington commenced negotiations with various Government officials and the United States Attorney's office toward the end that the highway would be returned to the state after the close of the war. (Exh. 10, Tr. 279-280, Tr. 319)

These negotiations were carried on over a period of approximately three years when it was finally concluded that relocation of the highway would be required at least for state purposes. (Exh. 10, Tr. 279-280, Tr. 319)

Following such determination the state officials surveyed various routes for relocation of the highway. These routes were described as:

1. Through the firing range from Pomona, crossing the Columbia River at Beverly;
2. Route 2 across Wahluke Slope as shown on Defendant's Exhibit 3, Tr. 225, 280, 289, 310-312, 319-321;
3. Route 3 shown on Exhibit 3, which route was ultimately selected by the state as the relocation of that portion of the state highway taken in this action.

It was not until September 2, 1949, that the State officials were finally and definitely advised that the highway could not be relocated through the firing range or across Wahluke Slope. (Route No. 2, Exh. 3) (Tr. 225, Tr. 289, Exh. 10)

Route No. 3 (Exh. 3) was thereupon selected by the officials of the State Highway District as the necessary relocation for that portion of the State Highway taken. (Tr. 226, 227, Tr. 312, Tr. 320, 321)

The United States attorneys and the Attorney General's office of the State thereupon proceeded toward trial of this action upon the question of the compensation, if any, to be paid to the State of Washington for the taking of twenty-eight miles of its Secondary State Highway No. 11 A.

The delay in bringing the entire cause to trial was not the fault of either party, but was occasioned as a result of various negotiations; first toward the State retaining the highway; second, for the State in obtaining a permissible relocation. (See Exh. 10, Tr. 83; Tr. 280-281)

Immediately prior to trial in order to avoid all questions concerning the applicable dates of taking, that is, whether the filing date of the first declaration of taking July 21, 1943, the filing date of the second declaration March 2, 1944, or the date of denial of use of relocation—Route No. 2, Exhibit 3 (Sept. 2, 1949) would apply, a stipulation was entered into that the date of taking would be considered to be July 23, 1943, the costs of relocation assessed as of that date with interest to be allowed at six per cent per annum from such date on any recovery; (Tr. 62, Tr. 486-487) also to avoid all questions regarding increased costs of construction from July 21, 1943, to September 2, 1949. (Tr. 486, 487)

The cause proceeded to trial before a jury on May 17, 1951, and the trial was concluded May 28, 1951. (Tr. 61, Tr. 615)

The defendant, State of Washington, in such trial assumed the burden of proof. (Tr. 63)

At the close of defendant's evidence plaintiff moved for a directed verdict. (Tr. 407-414) The Court denied such motion (Tr. 414-415) (Appendix "A," Pages 45, 46) and plaintiff proceeded with its evidence.

At the conclusion of trial the plaintiff renewed its motion for a directed verdict (Tr. 591) (Appendix "A," Page 46), which the Court again denied. (Tr. 591)

The jury was thereupon instructed by the Court. (Tr. 593-610) Two forms of verdict were submitted to the jury, i. e.

Verdict Number 1, omitting the formal heading, reads:

"We the jury in the above entitled cause find that there was no reasonable necessity for the construction of a substitute highway, and find for the defendant in the nominal sum of one dollar."

Verdict Number 2 reads:

"We the jury in the above entitled cause find that there was reasonable necessity for the construction of a substitute highway for the portion of highway 11-A taken by the government, and find for the defendant in the sum of \$....."

The verdict of the jury was returned on form No. 2 in favor of the State in the sum of \$581,721.91. (Tr. 45, Tr. 614)

The plaintiff thereupon moved for judgment notwithstanding the verdict of the jury (denominated motion for new trial), (Tr. 45-46), which motion the Court granted setting aside the jury verdict and directing entry of judgment against the plaintiff in favor of the State in the nominal sum of one dollar. (Tr. 47-48). The oral

pronouncement of the Court in granting the motion for judgment notwithstanding the verdict is found at Tr. 615-619. (Appendix "B", Pages 47-50)

Final judgment was entered herein on February 7, 1952. (Tr. 49-53) The defendant State seasonably appealed on February 29, 1952, from the order of the lower court setting aside the verdict and directing entry of judgment and from the final judgment. (Tr. 54)

QUESTION INVOLVED

The jury having found that " * * * that there was reasonable necessity for the construction of a substitute highway for the portion of highway 11-A taken by the government * * * ", and having assessed damages in favor of the state therefor in the sum of \$581,721.91 as relocation cost, should the Court have set aside such verdict of the jury?

The question resulted from the pleadings by the filing of the declaration, amended declaration of taking, orders on such declarations (Tr. 12-44) and payment by the government of the sum of one dollar (\$1.00) into the registry of the Clerk of the District Court as the estimated just compensation for the highway taken. To such payment the state objected and the cause proceeded to trial, the state contending it was entitled to the costs of relocating that portion of the highway taken, such costs being in the sum of \$1,117,556.58 (Tr. 206, Exh. 9) less \$50,000.00, the estimated costs of the ferry not taken. (Tr. 601-602)

At the conclusion of the State's evidence the Government made a motion for directed verdict, which motion

squarely presented the question in preliminary form to the Court. (Tr. 407-414) The Court denied the motion (Tr. 414-415) (Appendix "A", Pages 45, 46). The question was again so presented when the government renewed its motion, which the Court again denied at the close of the case. (Tr. 591) (Appendix "A," Page 46)

The question of reasonable necessity for relocation of that portion of the highway taken and the costs thereof were presented also by the instructions of the Court and the forms of verdict submitted. (Tr. 593-610)

The Government's motion for judgment notwithstanding the verdict (Tr. 45-46), which the Court granted (Tr. 615-619) (Appendix "B," Pages 47-50) for the last time in these proceedings, raised the problem.

ASSIGNMENTS OF ERROR

1. The jury having returned a verdict finding that there was a reasonable necessity for the construction of a substitute highway for the portion of State Highway No. 11-A taken, and assessing damages, being the cost of relocation, in the sum of \$581,721.91, the Court erred in setting aside that verdict.

2. There was substantial evidence introduced at the trial establishing the necessity for the replacement of that portion of State Highway 11-A taken, and the Court erred in holding that the verdict of the jury was not supported by such evidence.

3. The Court erred in entering the Order Setting Aside Verdict and Directing Entry of Judgment.

4. The Court erred in entering final judgment granting the government title to the portion of State Highway 11-A taken for the nominal sum of \$1.00.

5. The State offered evidence which would have further supported the verdict of the jury if admitted, and the Court erred in refusing to admit such evidence.

SUMMARY OF ARGUMENT

1. A ruling of the Court on a motion for judgment notwithstanding the verdict involves no discretion, but can be granted only when there is no evidence of reasonable inference from the evidence to sustain the verdict.

2. The measure of damage in the condemnation of a highway is the cost of the construction of a substitute highway along another route to the same standard and grade as the highway taken.

3. The evidence of the appellant established a necessity for the highway taken and that the proposed route was a reasonable substitute for it.

ARGUMENT

I. Setting Aside Verdict

The Court, in passing on a motion for directed verdict or to set aside a verdict, is not called upon to weigh the evidence, to exercise discretion or to pass upon the truth or falsity of the evidence. The one contesting the motion is entitled to the benefit of all inferences that may reasonably be drawn from the evidence in sustaining a verdict of the jury.

While there may be a question as to whether the rule is one of substantive law or procedures, and thus governed by Federal or State rule, we deem the distinction immaterial. The rule appears the same in both jurisdictions and the District Court recognized it in this case in passing on the motion for directed verdict. (Tr. 415, Appendix "A", Pages 45, 46 *Supra*) The rule is stated in *Myer v. Little Church by the Side of the Road*, 37 Wn. (2d) 897, 227 P. (2d) 165, at page 905 as follows:

"The rule which we have applied, and which should govern both the trial court and this court, is stated in the recent case of *Olsen v. White*, ante p. 62, 221 P. (2d) 542, as follows:

" 'A challenge to the sufficiency of the evidence, a motion for nonsuit, a motion for a directed verdict, or a motion for judgment notwithstanding the verdict admits the truth of the evidence of the party against whom the motion is made and all inferences that reasonably can be drawn therefrom, and requires that the evidence be interpreted most strongly against the moving party and in the light most favorable to the opposing party. *Billingsley v. Rovig-Temple Co.*, 16 Wn. (2d) 202, 133 P. (2d) 265, and cases therein cited. *Williams v. Hofer*, 30 Wn. (2d) 253, 191 P. (2d)

306. When confronted with such a situation it becomes the duty of the court to be guided by the above rule, rather than to consider all of the evidence presented during the trial.' ”

also in *Wilcoxon v. Seattle*, 32 Wn. (2d) 734, 203 P. (2d) 658, at page 737 as follows:

“In considering the city’s assignment that the trial court erred in refusing to enter judgment in its favor notwithstanding the verdict, it is incumbent upon us to keep in mind the well established rule that, in passing upon a motion for judgment notwithstanding the verdict, we must not only accept as true all competent evidence in the record favorable to respondents, but must give them the benefit of every favorable inference which may be reasonably drawn from such evidence. *Vercruysse v. Cascade Laundry Co.*, 193 Wash. 184, 74 P. (2d) 920; *Keller v. Seattle*, 200 Wash. 573, 94 P. (2d) 184. A motion for a judgment notwithstanding the verdict involves no element of judicial discretion. *Wiggins v. North Coast Transp. Co.*, 2 Wn. (2d) 446, 98 P. (2d) 675.”

and in *Moore v. Keeseey*, 24 Wn. (2d) 139, 163 P. (2d) 164, at page 140 as follows:

“In order to have granted the motion it would have been necessary that the court be able to say there was neither evidence nor reasonable inference from the evidence from which the jury could have arrived at the verdict it rendered, admitting the evidence submitted by respondent to be true and interpreting all of the evidence most strongly against appellant and in a light most favorable to respondent.”

also in *Hurst v. Peterson*, 189 Wash. 169, 64 P. (2d) 788, at page 172 as follows:

“In weighing the sufficiency of the evidence on a motion for judgment *non obstante veredicto*, the court is to take that view of the evidence most favorable to the party against whom the motion is made,

and where the motion is made by the defendant the plaintiff is entitled to the benefit of any favorable evidence adduced by the moving party. *Fleming v. Buerkli*, 159 Wash. 460, 293 Pac. 462.”

To the same effect are: *Moen v. Chestnut*, 9 Wn. (2d) 93 (101), 113 P. (2d) 1030; *Smith v. Leber*, 34 Wn. (2d) 611 (614), 209 P. (2d) 297; and *Bulette v. Bremerton*, 34 Wn. (2d) 834 (836), 210 P. (2d) 408.

The same rule is announced in the following federal cases: *Perkins v. Northern Pac. Ry. Co.*, 199 Fed. 712 (715) (9th Cir.); *Port Angeles Western Ry. Co. v. Tomas*, 36 Fed. (2d) 210 (9th Cir.); and *E. K. Wood Lumber Co. v. Anderson*, 81 Fed. (2d) 161 (166) (9th Cir.). See particularly *Smith v. Shevlin-Hixon Co.*, 157 Fed. (2d) 51 (53-54) (Ore.) (9th Cir.) wherein it is stated:

“It is hornbook law that, on a motion for directed verdict, the evidence adduced by the opposing party shall be taken as true and all reasonable inferences deducible therefrom shall be given their most favorable intendment. This rule is recognized in the jurisprudence of Oregon.”

Evidence to sustain a verdict must be substantial. By substantial evidence is meant that character of evidence which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. *Ruff v. Fruit Delivery Co.*, 22 Wn. (2d) 708, 157 P. (2d) 730; *Neel v. Henne*, 30 Wn. (2d) 24, 190 P. (2d) 775.

From the foregoing we consider the rule applicable in this case to be that the trial court, when passing upon the motion for judgment notwithstanding the verdict, was not permitted to exercise any judicial discretion or

to weigh the evidence in any particular. The State of Washington, which occupied the position of contestant and was contesting the motion for judgment notwithstanding the verdict, was entitled to have the evidence construed most favorable to it and this included all of the favorable evidence in the case whether introduced by the state or by the government. We feel, therefore, that the court has erred in holding that the evidence in this case was not substantial, in substituting its judgment for that of the jury and in determining from all of the evidence in the case that the jury was in error in arriving at its verdict. This conclusion we consider amply sustained by the evidence, the testimony and the exhibits.

II. General Rule in Highway Condemnation

When a highway is condemned to convert it to a superior public use, the condemning authority must pay just compensation for the taking of the highway, the same as for the taking of any other property or interest. U. S. Constitution, Amendments 5 and 14; *Town of Nahant v. United States*, 136 Fed. 273; 69 L. R. A. 723, Reaffirmed in 153 Fed. 520; *Town of Bedford v. United States*, 23 Fed. (2d) 453; *United States v. Wheeler TP.*, 66 Fed. (2d) 977; *United States v. Des Moines County*, 148 Fed. (2d) 448.

In the above *Bedford* case the Circuit Court of Appeals for the First Circuit stated on page 457 of the opinion found in 23 Fed. (2d):

“ * * * But the Federal Government’s power of eminent domain—necessarily implied as an efficient and appropriate means of exercising other powers expressly given—is to be used subject to the broad limitations of the Fifth Amendment. It is a stranger

to the town. It can no more take, without compensation, their property rights, than it can those of an individual."

The measure of just compensation for the taking of a highway or a portion of a highway is the cost of the construction of a reasonably necessary substitute for the highway or portion taken. This may be substantially more or less than the cost of the construction of the highway or portion taken. *U. S. v. Wheeler TP.*, 66 Fed. (2d) 977; *Jefferson Co. v. T.V.A.*, 146 Fed. (2d) 564; *U. S. v. Arkansas*, 164 Fed. (2d) 943; *U. S. v. N. Y.*, 168 Fed. (2d) 387; *California v. U. S.*, 169 Fed. (2d) 914; *U. S. v. Los Angeles County*, 163 Fed. (2d) 124; *City and County of Honolulu v. U. S.*, 188 Fed. (2d) 459; *City of Fort Worth, Texas v. U. S.*, 188 Fed. (2d) 217.

In *United States v. Des Moines County*, 148 Fed. (2d) 448, on page 499, the Court of Appeals for the Eighth Circuit stated:

" * * * If it is unnecessary to replace the roads or provide substitutes for them, the appellees have suffered no money loss and have been relieved of the burden of maintaining the roads taken. *If it is necessary for the appellees to provide substitute roads in order to readjust their system of highways, they are entitled to the cost of constructing the necessary substitute roads, whether that be more or less than the value of the roads taken.* This cost will give to the appellees the actual money loss which will be occasioned by the condemnation, and is the proper measure of damages for the taking." (Emphasis ours.)

The question of the reasonable necessity of providing a substitute for the highway taken is a question of fact, or for the jury. There may be necessity for such sub-

stitute, even though existing facilities may carry the traffic in some manner.

U. S. v. Alderson, 53 F. Sup. 528, contains the following expression of the rule at the bottom of page 529 of the above volume:

“The first question for the jury in this case is whether roads 7,11, 12/7, 14/1 and 15 which the State asks to be improved, are or are not reasonable practical county roads. * * *”

In *City of Fort Worth, Texas v. U. S.*, 188 Fed. (2d) 217, the Court of Appeals, Fifth Circuit, states:

“ * * * Since the question of just compensation, or what is necessary to provide a substitute facility, is one of fact for judicial determination, there could be little ground for questioning the Court’s finding were it not for the reliance which the Court apparently placed upon the presence of an expressway, constructed by the City, State and Federal Government as an adequate facility at the time to handle all of the traffic, and his further reliance upon the use of that part of Pecan Street now designated as Highway No. 81 A, likewise already in existence.”

The following cases are also indicative of the fact that necessity of substitution is a jury question: *U. S. v. Des Moines County*, 148 Fed. (2d) 448; *U. S. v. Los Angeles County*, 163 Fed. (2d) 124; *City and County of Honolulu v. U. S.*, 188 Fed. (2d) 459.

The Secondary State Highway 11-A, twenty-eight miles of which was taken by the Government in this action, was operated and maintained by the Washington State Department of Highways and the Director thereof as a part of the State Highway System under and by virtue of Sec. 12, Chapter 207, Laws of the Legislature of Washington, 1937, which reads as follows:

"SEC. 12. Secondary state highways as branches of Primary State Highway No. 11 are hereby established according to designation and description as follows:

"(a) Secondary State Highway No. 11-A; beginning at Connell on Primary State Highway No. 11, thence in a westerly direction by the most feasible route to Yakima on Primary State Highway No. 3; the director of highways of the State of Washington shall provide suitable facilities for vehicle and pedestrian crossing of the Columbia river at the point where secondary State Highway No. 11-A, as herein described, crosses the river, and shall maintain said means of crossing at the expense of the State of Washington and without charge to the traveling public;"

At the conclusion of the trial of the case the Court properly submitted to the jury as part of its instructions the following:

"The first question for you to decide, members of the jury, is whether, at the time of the taking of the portion of highway 11-A, there was reasonable necessity for the construction of a substitute highway. If there was no such necessity, then the state of Washington is entitled only to a nominal award and you should so indicate on form of verdict number 1, which I shall supply you, and which I shall explain to you later on in these instructions." (Tr. 597)

"If you determine that a substitute highway to take the place of highway 11-A was reasonably necessary at the time of the taking in 1943, it will be your duty to determine the sum which will compensate the state of Washington and make it whole for such taking, and on form of verdict number 2 with which you will be supplied, you should fill in the amount which would have represented the cost in July, 1943, to the state of Washington to construct such substitute highway on the route determined, to

substantially the same quality and standard as the highway taken.” (Tr. 600)

The jury returned verdict number 2 in the amount of \$581,721.91 in favor of the State.

By its ruling in setting aside the verdict (Tr. 615-619) (Appendix “B”) the Court has substituted its determination on the two above factual questions submitted for that of the jury. The Court gave little, if any, consideration to the above rule that the evidence was to be accorded every reasonable inference to sustain the verdict. In fact the Court felt that in any event the matter should be passed upon by this Court of Appeals for he said:

“While I may be over-simplifying it, I think much the same situation exists here, and I’m impressed by this practical situation, that this case probably should go to the Court of Appeals anyway, and it seems to me it would be to the interest of both parties for this matter to be decided without a new trial, and if the Court of Appeals decides, as it would be in a position to decide the same as I am, there’s no particular weight will attach to my judgment in this case, the Court of Appeals will decide from the record whether there’s sufficient evidence to support the verdict, and if there is, I’ll be directed to re-instate it. That may be rather cold comfort to the state in this case, but there is that practical situation. I don’t think any of us are particularly eager to retry this case, because we have the same issues and the same problems, and I think probably the jury would do much the same thing if they had the question to decide under the evidence submitted.” (Tr. 617-618)

That the evidence was substantial and conclusively sustained the verdict and the motion for judgment notwithstanding the verdict should have been overruled is

clearly shown by those portions of the evidence hereinafter set forth from the record.

III. Evidence Sustaining Verdict

Secondary State Highway 11 A extended from Yakima to Connell. Prior to 1943 there were four ferry crossings on the Columbia that were used to connect 11 A with other highways. They were the Richmond Ferry at Vernita, the Wahluke Ferry at Wahluke, the White Bluffs Ferry at White Bluffs (Tr. 394-395), and the free state ferry at Hanford on 11 A. In 1941 there were 17,314 vehicles that crossed the state ferry alone at Hanford and which used 11 A either on one or both sides of the Columbia River. (Tr. 397, Exh. 19) In 1942, the first year of full scale gas rationing, there were 14,450 vehicles over that ferry alone. (Tr. 398) The ferry operators, Wurtz (Tr. 579) and Moede (Tr. 588) stated that ten to fifteen per cent of the cars using that ferry were from Hanford or White Bluffs.

Prior to the commencement of Hanford Works Project, Hanford and White Bluffs were two rather isolated unincorporated communities in northern Benton County. Highway 11 A ran through the smaller Hanford, and the connection was between Primary State Highways 11 and 3 at Connell and Yakima. It was an integral part of the State Highway system, giving an alternate route and a short route from Yakima to Connell and Spokane (Tr. 88, Exh. 4), and from Spokane to southwest Washington over White Pass (Tr. 283-286). The highway connected Yakima, a point where connecting

highways merged, with the Pullman-Colfax area (Tr. 334) and with the area around Connell and Ritzville (Tr. 155). The highway was used as a short route by truckers and tourists to escape traffic on other routes. (Tr. 333, 336, 344, 353) It was also a connecting link between Central Washington and the highway south to Portland (Tr. 583). The importance of the highway from a state-wide standpoint is illustrated by Exh. 3, the map of the State Highway system.

The removal of the center segment of twenty-eight miles has rendered 11 A of no value as part of the state system. Traffic therefore is forced to use the routes through Pasco or Ellensburg (Exh. 3), which are both two lane highways and heavily traveled. Thus the travel to and from Central Washington, the Columbia Basin area, and Yakima has been cut off except through congested areas and on the above highways that had already in 1943 reached a saturation point.

This is also true as to travel between points in east central Washington and western Washington, and between points in northeastern and southwestern Washington.

By this taking the state was in 1943, and has been since, prevented from using and improving the highway as a short route between the points above mentioned and a substitute route is essential to the system.

The reasonable necessity of providing a substitute highway for that part of State Highway 11 A taken on July 23, 1943, was shown by the State Highway engineers.

R. H. Pyle, district location engineer for the highway department (Tr. 70) and engaged in highway work for 27 years, testified that it was necessary to relocate State Highway 11 A as soon as possible after its closure (Tr. 227), and that the relocation Route 3 was necessary and feasible.

O. R. Dinsmore, civil engineer and assistant director of highways, and formerly acting director for the State (Tr. 297), with 28 years of highway experience, testified that in his opinion the relocation of State Highway 11 A was necessary after it was closed and the proposed route was a reasonable substitute. (Tr. 286-287) He also testified that there was a demand for the relocation of State Highway 11 A. (Tr. 305)

T. P. Doyle, district engineer, corroborated Mr. Dinsmore's testimony (Tr. 311-312) that the relocation was necessary and the proposed route No. 3 was a necessary and feasible substitute. Mr. Doyle (Tr. 385) further testified that there was no highway crossing of the Columbia River from Pasco to Vantage, a distance of 90 miles, and that the Pasco bridge was a two lane bridge.

R. H. Kenyon, a highway engineer for 31 years, was formerly district engineer and at the time of trial was engineer of plans and contracts, headquarters office. (Tr. 318) He had held many consultations with the Corps of Engineers concerning the relocation of the route of Highway 11 A. (Tr. 319) He testified that Highway 11 A was an essential part of the State Highway system and that it was essential to relocate it via route 3, Exhibit 3. (Tr. 320-321) He further testified that the highway bridge at Pasco

in 1943 carried an annual daily average of 4,300 vehicles (Tr. 323) and the highway north of Yakima, 4,000. The capacity load on a double lane highway was 4,000 vehicles per day. (Tr. 287)

If the engineering testimony had been all of the state's evidence on feasibility and the necessity for re-establishment, that evidence would be sufficient under the laws of the State of Washington. The authority to lay out highways is vested in the department of highways acting through its Director.

Chapter 53, Section 25, Laws of 1937, p. 146 (Rem. Rev. Stat. 6400-25) (RCW 47.12.010) provides as follows as to primary highways:

“ * * * In case of condemnation to secure such lands the action shall be brought in the name of the State of Washington in the manner provided for the acquiring of property for the public uses of the state, and in such action the selection of the lands by the director of highways shall, in the absence of bad faith, arbitrary, capricious or fraudulent action, be conclusive upon the court and judge before which the action is brought that said lands are necessary for public use for the purposes sought. * * * ”

And Chapter 53, Section 31, Laws of 1937, p. 152 (Rem. Rev. Stat. 6400-31) (RCW 47.28.010) gives the Director these further powers:

“SEC. 31. Whenever the general route of any primary state highway shall be designated and laid out as running to or by way of certain designated points, without specifying the particular route to be followed to or by way of such points, the director of highways shall determine the particular route to be followed by said primary state highway to or by way of said designated points, and shall be at lib-

erty to select and adopt as a part of such primary state highway, the whole or any part of any existing public highway previously designated as a county road, primary road or secondary road or now or hereafter classified as a county road. The director of highways need not select and adopt the entire routes for such primary state highways at one time, but may select and adopt parts of such routes from time to time as he deems advisable. Where a primary state highway is designated as passing by way of a certain point, this shall not require the director of highways to cause such primary state highway to pass through or touch such point but such designation is directional only and may be complied with by location in the general vicinity. The director of highways is empowered to construct as a part of any primary state highway as designated and in addition to any portion meeting the limits of any incorporated city or town a by-pass section either through or around any such incorporated city or town."

Chapter 207, Section 20, Laws of 1937, p. 1012 (Rem. Rev. Stat. 6402-20) (RCW 47.04.030) provides that all powers given the Director as to primary highways apply to secondary highways as well:

"SEC. 20. The director of highways shall have all the powers and perform all the duties with respect to secondary state highways, described and designated by this act, as have been or may be by law granted with respect to primary state highways so far as the same are consistently applicable. All provisions of the law of this state with respect to the construction, reconstruction, location, relocation, alteration, repair, improvement, maintenance, care and protection of primary state highways of this state shall apply to secondary state highways described and designated by this act and all powers and duties of public officers of this state with respect to the receipt and use of funds of the Federal government

relating to primary state highways shall apply to secondary state highways. * * *

The Supreme Court of Washington in *State ex rel. Coyle v. Superior Court*, 128 Wash. 460, 223 Pac. 3, on this subject stated:

“Under ch. 32, Laws of 1921, p. 116 (§ 6766, Rem. Comp. Stat.) (P. C. § 6786), it is provided ‘that in such action the selection of the lands by the supervisor of highways shall, in the absence of bad faith, arbitrary, capricious or fraudulent action, be conclusive upon the court and the judge before whom the action is brought that said lands are necessary for the purposes sought.’ Viewing the testimony in the light most favorable to the relators, it shows only that there is a difference between experts as to which route is the most practical and satisfactory. The testimony clearly shows that full consideration was given by the public officials charged with that duty of the entire situation as it related to both routes, and that they were possessed of all practical and expert information regarding the matter, and, after a thorough study, the new route was decided upon as being the proper one on which to construct and improve a permanent highway. Under such conditions the court is forbidden by the statute to hold that the lands selected for the new route are not ‘necessary for the purpose sought.’ * * *

The importance, continued use and necessity for relocating the state highway as of the date of the taking, is clearly reflected by defendant’s Exhibit 10 (Appendix “C”). This exhibit also shows the extent of negotiations conducted over a period of practically eight years between the state and government officials to the end that the state highway be either returned to the state after the war or relocated.

The testimony of the State Highway engineers Pyle, Doyle, Kenyon and Dinsmore, on the question of necessity and feasibility of the relocated route No. 3, as above epitomized and referred to in this brief, was not the result of expert opinion formed for trial purposes but was a result of conclusions drawn, statements made and positions asserted by them for the state prior to the taking in 1943, at the time of the taking, and at all times subsequent thereto up to the time of trial. This is also amply illustrated by Exhibit 10 (Appendix "C") and the various letters contained therein.

Said exhibit further evidences that the government officials realized the necessity and importance of either preservation and return or relocation of the highway for the state.

On the above points from Exhibit 10 (Appendix "C") we respectfully refer to the following excerpts therefrom:

1. Letter of April 16, 1943, from Norman G. Fuller, Real Estate Project Manager for the War Department, to R. H. Kenyon, District Superintendent, State Highway Commission, indicating the portion of the state highway to be closed to the public and taken and the portion thereof to remain open and be maintained by the state. (Appendix "C," pages 51-53)
2. Letter of June 29, 1943, from Howard Tustin, Special Attorney, Lands Division, Department of Justice, to the Attorney General of Washington, showing the state wished to continue its operation and use of the highway and that the government might accede

to the taking of only a leasehold interest for the duration of the war period and six months thereafter, instead of the fee. (Appendix "C," pages 54-56)

3. Letter of July 7, 1943, from the State Attorney General's office to the War Department, Division Engineer, to the same effect and suggesting a conference between the state and government officials involved. (Appendix "C," pages 57-58)

4. Letter of August 3, 1943, from Lt. Col. F. T. Matthias, Area Engineer, U. S. Engineer's office, to the Department of Highways concerning relocation studies and possibilities. (Appendix "C," pages 58-59)

5. Letter of April 29, 1944, from the State Attorney General's office to Bernard H. Ramsey, Special Assistant to the U. S. Attorney General, showing that in conference the government officials would attempt to return the fee to the highway taken, either by amendment to the Declaration or by stipulation, or in the alternative within one year advise the state as to whether it could relocate the highway through a portion of the project. (Appendix "C," pages 71-72)

6. Letter of April 10, 1945, from the State Attorney General's office to Frank Reed, Special Assistant to the U. S. Attorney General, calling attention to the lapse of one year without return of the fee or settlement of the relocation route. (Appendix "C," pages 72-76)

7. Letter of September 20, 1945, from Bernard H. Ramsey to the office of the State Attorney General, portions of which we here set forth:

"First, let me assure you that the War Department and the Department of Justice are both entirely sympathetic toward the desire of the State to have this highway returned to the State. Both departments are fully advised that the State considers this highway as an indispensable link in the postwar development plans for serving the Columbia basin area with adequate highways. I assure you that there is no disposition of any government agency to do anything other than cooperate as fully as possible with the State for making possible the completion of these plans.

" * * * * *

"I am convinced that if the State of Washington is willing to accept the fact that it will probably be impossible to permit the use of this highway by the general public for a considerable period of time, at a minimum three years after the end of the present emergency, that it will be possible to work out a solution to the problem that will be mutually satisfactory to the Government and to the State of Washington. I am confident, however, that the War Department cannot and will not consider returning the highway to the State for the general use of the public short of the period indicated.

"The other matters discussed can, I am sure, be agreed upon if the State is willing to agree to this delay in the return of the highway. I am sure that the War Department would stipulate the dismissal of the present condemnation proceeding for the acquisition of the fee title to the road, and would be willing to amend the proceeding to acquire instead a leasehold interest coupled with the exclusive possession and use clause for the period agreed upon.

"As I understand the position of the State, if this matter can be worked out satisfactorily, the State would be willing to waive any compensation other than the return of the highway with any additions and improvements made by the Government during its period of occupancy.

“May I be permitted to express my deep appreciation of the very cooperative attitude shown by the State in this matter, and particularly by your office and by the office of the State Commissioner of Highways. While we have encountered many difficulties in attempting to find a solution in this matter, it has been, and I can assure you will continue to be, a pleasure to work with you in seeking a solution mutually satisfactory to the State and to the Government.”

8. Letter of April 2, 1946, from State Attorney General's office to Mr. Ramsey enclosing stipulation for return of the highway to the state. The stipulation appears at Appendix “C,” pages 81-85, the letter at Appendix “C,” pages 86-87.

9. Letter of July 18, 1946, from Don. E. Meldrum, War Department, to the State Attorney General, explaining the government's rejecting of the stipulation. (Appendix “C,” page 97)

10. Letter of October 14, 1946, from Mr. Ramsey to the State Attorney General's office indicating that the matter of return of the highway or relocation of the same should await further consideration by officials of the Manhattan District and the Atomic Energy Commission. (Appendix “C,” pages 102-103)

11. Letter of September 2, 1949, from Fred C. Schlemmer, Manager Hanford Operations Office, Atomic Energy Commission, to the State Director of Highways finally stating that the state could not relocate the highway across the Wahluke Slope (Route 2, Exhibit 3) but could relocate from Vernita to

Beverly to Othello (Route 3, Exhibit 3) (Appendix "C," pages 121-122)

12. Letter received November 25, 1949, by the Department of Highways from B. D. Reams, Assistant Adjutant General, U. S. Army, 2nd Infantry Division, finally refusing permission to the state relocating through the Yakima firing range area. (Appendix "C," pages 123-124)

Analysis of Exhibit 10 can lead only to the conclusion that the state at all times since the taking sought, first a keeping of, or return of, highway to it, and, second a relocation thereof by the most feasible route. In the latter connection routes across Umptanum ridge and Wahluke Slope were surveyed and it was not until September and November of 1949 that the two aforesaid routes were denied to the state. As a consequence the state highway engineers have determined and so testified that Route 3, Exhibit 3, is a necessary and feasible relocation of the highway taken.

Further emphasizing the necessity of the relocation of State Highway 11 A the State called two engineers. One was O. E. Brashears, County Engineer of Yakima County. He had an early and intimate knowledge of 11 A and expressed his opinion (Tr. 294, 295) that it was a necessary part of the State system in 1943 and that its relocation over Route 3 was necessary and practical. The other engineer was James M. Berkey, the Chief of the Community Development Section of the Columbia Basin project for the Bureau of Reclamation. (Tr. 105) His

office had the responsibility of laying out road patterns. His testimony is discussed later in this brief.

Local residents of Connell detailed the use made of 11 A, the demand for it and the necessity for a relocation. Loen Bailie, a farmer who lived near Mesa, traveled 11 A frequently before it was closed. (Tr. 91-92) He felt that Route 3, Exhibit 3, would be a reasonable relocation and necessary. (Tr. 95) John Dougherty, a service station operator at Connell, testified to the use made of 11 A (Tr. 333 to 335) and to demand for relocation. He said: "Oh, I'd have lots of people come in there and want to know if they could get through the project, if that route was still open or closed, also have some of them that would go down there and couldn't get through and have to come back." (Tr. 336-337) Further he stated that there was a demand for relocation of Highway 11 A over Route 3.

O. S. Bailie, Mayor of Connell and the operator of a grocery store, testified that there was a demand for a substitute highway over Route 3 and that after 11 A was closed people stopped and inquired at the store if they could get through 11 A. (Tr. 345) Ben Klindworth, a real estate and insurance man from Connell and the Secretary of the Chamber of Commerce, testified that he frequently used 11 A when available (Tr. 351), that all kinds of traffic used 11 A (Tr. 353), that there was a substantial demand for a substitute over Route 3, although Route 2 would be preferable. (Tr. 355)

B. A. Perham, chairman of the Yakima Chamber of Commerce Committee on roads and highways (Tr. 153) in 1943, testified to a demand for 11 A and the necessity

for its relocation over Routes 2 or 3. (Tr. 158, 159) Loren Mackham, manager of the Yakima Chamber of Commerce, and a long time resident of Yakima (Tr. 166) gave his opinion that the relocation of 11 A over Route 3 was necessary. (Tr. 168-170)

What proof is to be deemed sufficient to establish the "reasonable necessity" for the relocation of 11 A? Here we have submitted to the jury the testimony of State Highway engineers, who are required by statute to maintain highway 11 A. They are experts and have given their opinion of the necessity for relocation of the highway. The local residents have testified to the use made of the highway before it was closed, and to the demand for it when not reopened. How and in what manner could a demand or a necessity for the relocation of the highway otherwise be shown?

To sustain the court's position all the evidence, it seems, must be ignored so that the only remaining question would be "is the proposed route shorter than other existing routes"? As a result of the taking in this case there is now no highway crossing of the Columbia River in the central part of the State of Washington for a distance of 90 miles along the river between Vantage and Pasco. Certainly the state is entitled to a highway crossing of the river within that area and to a highway serving all of the purposes formerly served by 11 A before the taking. The state is entitled to an alternate route to relieve traffic congestion and to connect and make its highway system as nearly complete as it was before the taking. The state cannot be forced to carry traffic on other existing and congested highways just because the Court has deter-

mined that the only thing that will establish necessity for replacement is a saving in distance.

The state further calls attention to the testimony of State Senator W. C. Raugust (Tr. 360-361), a member of the Roads and Bridges Committee of the State Senate. He likewise expressed his feeling of the necessity to relocate the highway. Also Senator Nat U. Washington of Ephrata, likewise a member of the Senate Committee and a member of the interim committee on highways, testified (Tr. 376, 377) that the relocation of 11 A on Route 3, (Exh. 3) was necessary.

Julia Butler Hansen, Chairman of the House Committee on Roads and Bridges, testified that her committee designated primary and secondary state highways. (Tr. 367) She stated relocation of 11 A was necessary. (Tr. 373)

Testimony of two of the government witnesses would likewise appear to sustain the verdict. Lars Langloe testified he considered Routes 2 and 3 on exhibit 3 to be a reasonable substitute for Highway 11 A. (Tr. 525) Mr. Langloe was an engineer called by the government. Charles Parker, another engineer, testified the lack of traffic over 11-A was due primarily to the condition of the surfacing. The state was asking only that the substitute on Route 3 be built to connect the two ends of 11 A to the same standard as 11 A. The state should not lose the highway without compensation merely because the demand was curtailed due to lack of a hard surface.

EXHIBITS REJECTED AND TESTIMONY EXCLUDED

The State cannot build highways without first planning them. Columbia Basin development was a reality in 1941 and time alone was required to permit it to unfold. The Columbia Basin Project Act of March 10, 1943, 57 Stats. 14, gave authority to the Bureau of Reclamation to study highways and was a device to establish the road network found desirable into, within and from the Basin area. Problem 19 of Columbia Basin Joint Investigation (Iden. 5- rej. Tr. 107, 133, 139) incorporated in it the Davis (state) report of 1941 (Tr. 282, 283, 301 to 305, Iden. 11 and 11-A- Rej.) hereinafter mentioned.

For the convenience of the Court there is printed as Appendix "D" (Pages 133-175) portions of Identifications 5 and 11 that touch upon the studies of the highway system as it affects the area served formerly by 11 A. These were studies made under government authority prior to the taking in this case, and were offered by the state and rejected by the Court at the trial.

The necessity for continued use and value of Highway 11 A is shown by the testimony of James M. Berkey (Tr. 141 to 152), which was excluded. Mr. Berkey, an expert in community planning, had charge of the division of the Bureau that advised on the location of highways. His training, experience and employment all fitted him to express an opinion on the subject under investigation. Yet the Court excluded his testimony and rejected the exhibits offered with it. (Iden. 5 and 6 Rej. Tr. 140 to 152) Identification 5 is the report of the investigation of highways in the Columbia Basin (Appendix "D" pages

133-159.) Identification 6 is the map prepared in Mr. Berkeley's office showing the area of the Columbia Basin Project, colored to show the lands included in the development under way at the time of trial (Tr. 141-143). It shows the area naturally tributary to 11 A and its substitute.

The ordinary rules of determining value in condemnation cases do not apply here. The Court has determined that, since the Columbia Basin was not actually being physically developed in 1943, the projected development was not material. Such might be the rule if a farm were being condemned for a highway. Such is not the rule when a highway is being condemned and closed.

The State's view is that the taking of a highway from the system, closing it and foreclosing the state from using or improving that route should entitle the state to show all proposed developments that had a bearing on its present and future use, even though that same proposed development in the ordinary condemnation case might not affect the market value of the property surrounding the highway.

Identifications 11 and 11 A rejected (Tr. 301-305) were prepared by the Washington State Department of Highways and submitted as a report to the state legislature in April of 1941. (Appendix "D" pages 159-175.) They were the basis of the report of the Bureau of Reclamation investigators on the above mentioned problem 19. (Appendix "D," pages 133-159 *supra*.) The state report was made to comply with the Act of the State Legislature, Ch. 169, Laws of 1939. (Tr. 133 to 135) We deem the rejection of these Identifications 11 and 11-A as error by the

Court because the plans and proposed developments existing in 1941 were certainly material to show necessity and demand for continued use of highway 11 A or a substitute therefor in 1943. Likewise the studies of the Yakima group (Iden. 7 and 8 Rej., Tr. 171 to 178) were of importance in determining population trends upward and the nature of the facilities at Yakima which could have been available to Central Washington through 11 A if the highway had remained open, and which will become and remain so available upon construction of the substitute or relocated portion of said highway involved in these proceedings.

When the Court said in its order, “ * * * that no substantial evidence was adduced in the trial of said cause establishing or tending to establish the necessity for a replacement of Washington State Highway 11 A, * * * ” we submit as error that the Court excluded evidence which was substantial. The proposed future development of tributary areas would certainly tend to establish the necessity for replacement. The Court erred in the exclusion of the evidence and exhibits that described the Columbia Basin development, showed the highway requirements of the areas served by the highway taken and the necessity for constructing a substitute therefor so as to make a connection between the termini of that highway taken. This we consider error on the Court's part that was cured by the verdict, but is now emphasized by the Court's setting aside the verdict.

CONCLUSION

The government's contention throughout the trial in this case, and the theory of the court as reflected in its opinion granting the motion for judgment notwithstanding the verdict, (Tr. 615 *et seq.*, Appendix "B"), are at variance with the applicable legal principles as set forth in the cases cited above, and in particular with the statements made in *City of Fort Worth, Texas v. United States*, 188 Fed. (2d) 217, (222) and in *Town of Bedford v. United States*, 23 Fed. (2d) 453, which statements are hereinafter set forth:

" * * * However, it will not at all do to say that in determining the cost of providing any necessary substitutes, an award in condemnation may be denied because there are already in existence other available routes which will in some fashion handle the traffic diverted by the condemnation. * * * In any event, as is clearly shown by *United States v. Des Moines County, supra*; *Jefferson County, Etc. v. Tennessee Valley Authority*, 6 Cir., 146 F. (2d) 564; *United States v. Los Angeles County*, 9 Cir., 163 F. (2d) 124, and other cases which could be cited, the rule universally enforced in such an instance recognizes the existence of the duty of a municipality to provide for a necessary readjustment of its traffic facilities and that the amount of compensation proper in such a case is the cost of constructing necessary substitute facilities in order to replace and rearrange its traffic arteries. In broad outline, the property taken is a part of the City's traffic system which it is under the duty to replace if necessary. In any proper view of the requirements of just compensation, the substitute 'necessary' is that necessary to readjust its street and highway system to serve the municipality's requirements and needs in as adequate a manner and extent and with equal utility as such

system would have provided had the facility in question not been condemned, so far as this is reasonably practical. *United States v. Los Angeles County, supra*, 163 F. 2d 124." *City of Fort Worth, Texas v. United States*, 188 Fed. (2d) 217 (222).

"It should not be overlooked that, when our highway law took form, 'ways' were hardly more than strips of land, slightly, if at all, improved. Today, as a result of the automobile, a large part of our highways are structures of stone and cement, costing more per mile than the original cost of many of our railroads. We can see neither logic nor justice in attempting to distinguish between such structures in the street as sewers, water pipes and buttresses of bridges, and the structure constituting the way itself, and the right of the town to the use of the land, apart from any expenditure previously made thereon, by the town. The real question is one of the incidence of cost or expenditure; and there is no such thing as compensation, within the fair meaning of the word, unless the separate entity that under sovereign power appropriates a part of this town way is required to pay the expenses it thus imposes upon the town within whose territory it makes the taking." *Town of Bedford v. United States*, 23 Fed. (2d) 453.

It therefore appears that the existence of other highways and the physical condition of the highway taken, as a legal proposition in this case, cannot have any bearing on necessity for construction of a substitute highway.

We submit that the opinions of engineers and other experts do show a reasonable necessity for the substitute highway involved. The uses made of the highway, the requirements of the area and the prospective development all show that the highway as it existed was necessary to the State Highway system and that a reasonable substitute was afforded. The verdict was well within the

amount as stated in the testimony of the witnesses. Certainly under the rule stated the State of Washington in this case is entitled to have the evidence introduced by it given every reasonable inference to sustain the verdict of the jury. We respectfully urge that the lower court be reversed and that the verdict be reinstated.

Respectfully submitted,

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Appendix A

APPENDIX "A"

OPINIONS

MOTION FOR DIRECTED VERDICT AT CLOSE
OF STATE'S TESTIMONY

"Mr. Ramsey: If the Court please, at this time the government moves for a directed verdict in this case, directing the jury to return a verdict herein for a purely nominal sum. * * * " (Tr. 408)

"THE COURT: I think unquestionably in a case of this character there are two questions to be decided, that is, perhaps I should say two principal questions to be decided by the trier of the facts; first, whether at the time of taking and under the circumstances then existing there was reasonable necessity for the building of a replacement or substitute road to take the place of the one taken, and then if the trier of the facts finds that, what was at that time the fair and reasonable cost of building a substitute road comparable in kind and quality to the road taken.

"I think that those are questions of fact, both of them, and questions of fact for the jury if there is any evidence upon which to submit them, and in that respect I think that I am in the same situation that I would be in any case where the sufficiency of the evidence is questioned at the close of the case of the party having the burden of proof, and that is not what I would hold or what looks to me to be the most reasonable or where the weight of the evidence is, but whether there is any substantial evidence, viewed in the light most favorable to the party having the burden of proof, that could sustain a verdict, and I think here, without going into detail, that in my judgment there is

substantial evidence, viewed in the light most favorable to the defendant, upon which a finding that there is a necessity for replacement could be based by the jury, so that the motion will be denied. The Court will take a ten minute recess before proceeding.” (Tr. 414, 415) (Italics ours.)

MOTION FOR DIRECTED VERDICT AT CLOSE
OF ALL THE TESTIMONY

“MR. RAMSEY: No other testimony, if the Court please. At this time I do want to renew my motion for a directed verdict on the same grounds as urged at the conclusion of the state’s case.

“THE COURT: It will be denied, and exception allowed. * * * ” (Tr. 591)

Appendix B

APPENDIX "B"**COURT'S RULING ON MOTION FOR NEW TRIAL OR
JUDGMENT NOTWITHSTANDING THE VERDICT**

Yakima, Washington

Friday, December 21, 1951

Before Hon. Sam M. Driver, United States District Judge.

"THE COURT: This case I might say has given me great concern because of the novelty of the questions involved and the importance of it, of course, to both the state and the government, and the feeling that I had from listening to the evidence and from the verdict which the jury returned, the very definite impression that I had was that the jury was over impressed by two considerations, one that a road that cost a considerable amount of money to the state, or the county and the state, having been taken, that compensation should be paid for it, that the government shouldn't take something of great value and not pay for it, and the other thing I think that impressed them, and there was so much of that that came into the evidence despite rulings and objections, and that was that there should be a connection between Yakima and the Columbia Basin area because of the development there that is in prospect. I'm always hesitant to set aside a verdict because it isn't in accordance with the weight of the evidence in a case of this character, because that would mean another jury trial probably on much the same type of evidence before much the same type of jury with probably the same substantial result, and we have to stop trying these cases sometime, we can't try them over and

over, but it seems to me extremely doubtful, to say the least, that there is substantial evidence here of a character which the jury could reasonably accept that there was a reasonable necessity for the replacement of this highway. The necessity for serving the immediate area was eliminated by the fact that the area immediately served was taken by the government. All of the immediately adjacent landowners there had their lands taken, as we all know, of course, so that I think properly so, as a matter of strategy in the trial, the state particularly stressed not the necessity to replace local highway needs, but the proposition that this highway was integrated with the state highway system, and that as a part of the state highway system there was a necessity to replace it to keep the general system intact and to meet the general needs of the state, and a great deal was said about the White Pass and the connecting highways to the east, so that there was a great deal of stress placed upon the proposition that it was necessary to build a connection road from Yakima to the vicinity of Connell.

“Now, it doesn’t seem to me that since there is an established highway which apparently, according to the undisputed proof here, is shorter than the proposed road, there isn’t any showing as I recall that under the conditions then existing or even existing at the time of the taking or at the time of the trial that those roads, the primary highways through Kennewick and Pasco to Connell, weren’t fully capable of carrying the traffic that they might be called upon to carry. Of course I’m fully aware of the proposition that a jury’s verdict should stand if there is substantial evidence or reasonable inference

from the evidence which would support the verdict, but I am also impressed by the fact that we have to stop somewhere in the matter of letting the jury accept testimony that may be contrary to the undisputed—to other undisputed facts and circumstances, particularly physical facts. If we had half a dozen witnesses who expressed the opinion that it's fifty miles from here to Toppenish, and that distance from here to Toppenish were an important issue in the case, I don't see how you could say a verdict based upon that testimony would be supported by that evidence when the physical facts are that it's a much less distance to Toppenish.

“While I may be over-simplifying it, I think much the same situation exists here, and I'm impressed by this practical situation, that this case probably should go to the Court of Appeals anyway, and it seems to me it would be to the interest of both parties for this matter to be decided without a new trial, and if the Court of Appeals decides, as it would be in a position to decide the same as I am, there's no particular weight will attach to my judgment in this case, the Court of Appeals will decide from the record whether there's sufficient evidence to support the verdict, and if there is, I'll be directed to re-instate it. That may be rather cold comfort to the state in this case, but there is that practical situation. I don't think any of us are particularly eager to retry this case, because we have the same issues and the same problems, and I think probably the jury would do much the same thing if they had the question to decide under the evidence submitted.

“I'm not sure of the procedure here. My conclusion is that there is not substantial evidence to support the

showing that the state would have the burden of making that there was a reasonable necessity for the replacement of this road, and that therefore the jury had nothing to decide except the question of nominal damages, and the verdict therefore will be reduced to nominal damages. That was in your motion, was it not?

“MR. RAMSEY: That’s right.

“THE COURT: And exception of course will be allowed to the state.

“MR. RAMSEY: Would it benefit the record if the government at this time moved for judgment notwithstanding the verdict, and to set aside the verdict?

“THE COURT: Very well, I’ll consider that the arguments applied to that, and it will be granted. Upon mature thought, whatever form you wish to present, Mr. Ramsey, you may serve copies on opposing counsel, and I will be in Portland, Oregon, for the next two weeks, and then in Spokane the 7th of January.” (Tr. 615-618)

Appendix C

APPENDIX "C"

**WAR DEPARTMENT
OFFICE OF THE DIVISION ENGINEER
PACIFIC DIVISION**

Prosser, Washington

Refer to File

No. CE 601.1 RE

(Hanford Engineer Works)

April 16, 1943

Subject: State Highways in Army Construction Area,
Benton County

To: Mr. R. H. Kenyon
District Superintendent
State Highway Commission
Yakima, Washington

Dear Mr. Kenyon: Defendant's Exhibit No. 10

Inclosed is a map of the Hanford Engineer Works Project in Benton County, Washington. The map is available to personnel of your organization who may be concerned with the problems involved but, otherwise, is to be regarded as confidential and is not to be publicly displayed.

Following the visit of Mr. Frank Fergeson of this office to your office on or about March 29th the recommendation of the Area Engineer regarding the vacation of roads was requested.

Following are the requirements of the Army with regard to state highways in the area:

The state highway through Area "A" should be closed and abandoned for the entire distance colored in red on the inclosed map. It is to be understood that by abandonment of the highway the state should relinquish all right, title, and interest in and to the said highway, and that the Government will be the sole owner thereof.

The portion of the state highway colored in blue and lying in the westerly portion of the Area "B" should be maintained by the state and should be open to traffic, but rigid control will be exercised on those parties using the road. It is probable that a Control Station will be established where the highway enters Area "B," and that a sign will be posted at the intersection with the county road at the easterly boundary line of Section 31, Township 13 North Range 25 E.W.M. and that the highway will be barricaded one mile to the east where it enters Area "A."

That portion of the state highway colored in purple in the easterly portion of Area "B" will remain open for public travel and is to be maintained by the state. Traffic on this portion of the highway will be subject only to limited control for the present time.

Those portions of the state highway leading to the project as colored in green on the map will not be required for military use and only limited maintenance by the state will be necessary.

Any arrangement for continued operation of the state highway ferry at Hanford will have to be made directly between the State Highway Commission and the Area Engineer at Pasco. The Prosser Real Estate Office is not in a position to enter into such agreements.

It is understood that the instructions outlined above and the abandonment stated above are to become effective May 31, 1943.

It is requested that your office take whatever steps may be necessary to conform with these recommendations. This office will be glad to be of any assistance possible within its authority.

For the Division Engineer:

Very truly yours,

NORMAN G. FULLER

Real Estate Project Manager

NGF:lh

enc.

cc: to Lieutenant Col. H. R. Kadlec

WAR DEPARTMENT
UNITED STATES ENGINEER OFFICE
PACIFIC DIVISION

Prosser, Washington

May 27, 1943

Subject: Closing of State Highway

To: Director of Highways
Department of Highways
Transportation Building
Olympia, Washington

Attn: Mr. J. W. Hoover
Assistant Director of Highways

1. With reference to your letter of May 24, 1943, the Project Manager and Colonel Kadlec conferred this date and present conditions make it apparent that the date of May 31, 1943, stated in our letter of March 30, 1943 may be extended for approximately thirty days.

2. The public necessity for the delivery of food stuffs to the remaining sections of the area and other public considerations make it advisable to extend to the public the privilege of continued use of highway 11A.

3. During the period of extension, legal arrangements may be made to definitely establish the status of both highway 11A and the Hanford Ferry. Representatives of the Prosser Real Estate Office and the Area Engineers Office will confer with you concerning these matters in the immediate future.

For the Division Engineer:

FRED H. JOHNSTON

Real Estate Project Manager

APPROVED

HARRY R. KADLEC

Lt. Colonel, C. E.

Deputy Area Engineer

DEPARTMENT OF JUSTICE

LANDS DIVISION

Empire State Building

Spokane, Washington

June 29, 1943

The Attorney General

Olympia, Washington

Attention: Mr. Harold A. Pebbles

Dear Sir:

A few days ago Mr. R. A. Moen, who is associated with your office, called upon this office regarding a question which will arise concerning the interest of the State of Washington as to the secondary highway running between Yakima and Connel. The number of this highway is 11-A.

Mr. Moen stated that he would like to have some understanding as to what procedure should be followed which would protect the interest of the State of Washington, and which would allow the State of Washington to continue its operations upon this highway, but would not prevent the State from claiming total damages at some future time as a result of the Government's condemnation of the major portion of this highway. He suggested that a stipulation be entered into between the State of Washington and the United States Government whereby this protection would be insured.

The Declaration of Taking upon this highway has not been filed as yet by the United States and therefore it occurs to me that this matter can only be handled by the State of Washington and the War Department. It is suggested that you attempt negotiations with the acquiring agency, that is the War Department at Prosser, Washington, with the view of arriving at some agreement concerning this matter.

I believe that the best solution to the problems that will arise in this matter might be best solved by an attempt to have the War Department acquire a lease-hold interest on that part of the road which is subject to condemnation, which lease-hold interest would be for the duration and six months thereafter. As above stated, it is the belief of the writer that a solution will be best arrived at by your contacting the War Department at Prosser, concerning this matter, with the hope that an amicable agreement will result thereby.

Trusting that this suggestion will be of some help
in this matter, I am

Respectfully yours,

HOWARD T. TUSTIN,
Special Attorney

HTT:O

FBR:vio

WAR DEPARTMENT
OFFICE OF THE DIVISION OF ENGINEER
PACIFIC DIVISION
Prosser, Wash.
Box 71

Refer to File

No. CE 601.1 RE

(Hanford Engineer Works)

July 2, 1943

Attorney General, State of Washington
Olympia, Washington

Re: *United States vs. State of Washington et al.*

Dear Sir:

On June 30, 1943, this office forwarded a Declaration of Taking Assembly to the Office of the Chief Engineers at Washington, D. C., covering all that portion of Secondary State Highway No. 11 A lying in Areas "A" and "B," except that portion thereof between the Southwesterly right of way line of Chieicago, Milwaukee, St. Paul and Pacific Railroad of the South or right bank of the Columbia River.

As soon as the Declaration of Taking is filed, this office will be glad to furnish you with a copy thereof.

Very truly yours,

FRED H. JOHNSTON
Real Estate Project Manager

July 7, 1943

War Department
Office of the Division Engineer
Pacific Division
Prosser, Washington

Attention: Mr. Fred H. Johnston
Real Estate Project Manager

Re: File No. CE 601.1 RE
(Hanford Engineer Works)
*U. S. vs. State of Wash.,
et al.*

Dear Mr. Johnston:

Shortly after the discussion which we held in your office on Wednesday, June 23rd, relative to the filing of a Declaration of Taking covering Secondary State Highway 11-A within A and B areas, we called at the office of Mr. Crowley in Spokane and discussed with his assistant, Mr. Tustin, the feasibility of the government taking a lease hold interest rather than a fee in the highway.

This conference with Mr. Tustin was later followed by a long distance telephone conversation between the writer and Mr. Crowley. Mr. Crowley stated that he felt that the state's request was fair and that he would make every effort to work out the situation so that the state's interests as well as those of the government could be protected. Mr. Crowley was of the opinion that this might be done by the taking of a lease hold interest instead of a fee. At any rate, Mr. Crowley advised that he would arrange for a full conference on the matter with Mr. Ramsey, Mr. Crowley, yourself, the State Highway officials, and myself present, before the filing of your declaration.

In furtherance of such contemplated conference it will be sincerely appreciated if you will kindly allow us this courtesy before proceeding with any filing in the United States District Court.

A copy of this letter is being transmitted to Mr. Crowley at Spokane. Thank you for your kind attention.

Yours very truly,

SMITH TROY

Attorney General

ST:bjh

HAP

cc: Edwin J. Crowley

By: HAROLD A. PEBBLES

Asst. Attorney General

WAR DEPARTMENT

UNITED STATES ENGINEER OFFICE

Hanford Engineer Works

P. O. Box 550

Pasco, Washington

E-1

3 August 1943

Department of Highways
Office of the District Engineer
P. O. Box 52
Yakima, Washington

Attention: Mr. R. H. Kenyon

Gentlemen:

Reference is made to map and letter of your office dated 31 July 1943 showing proposed relocation of Secondary State Highway 11-A. A thorough study by this office has been given this proposed relocation and it is felt that the road, where it traverses Area "B" comes dangerously close to Area "A". For this reason and lack of control that could be exercised on the road as laid out,

it is not deemed advisable to encourage further study of this proposal.

It may, however, be possible to obtain a right-of-way for a State Highway through certain portions of Area "E" and this office will be glad to discuss this or other possible locations, with representatives of the State Department of Highways.

Yours very truly,

F. T. MATTHIAS

Lt. Col., Corps of Engineers
Area Engineer

August 7, 1943

Mr. Edward J. Crowley
Special Attorney
United States Department of Justice
Empire State Building
Spokane, Washington

Re: *United States v. State of Washington, Benton County, et al, No. 135, District Court, Eastern District of Washington*

Dear Mr. Crowley:

This will acknowledge receipt of Order of Declaration of Taking in the above case.

The state is now in process of making survey and estimating damages and as soon as this office has been furnished with the figures, we will further advise you in the matter.

Very truly yours,

SMITH TROY

Attorney General

HAROLD PEBBLES

Assistant Attorney General

HAP:vc

January 12, 1944

Mr. Ivan Herrick, Special Attorney
U. S. Department of Justice
Lands Division
520 Miller Building
Yakima, Washington

United States of America vs. State of Washington, Benton Co. et al. Civil Cause No. 135.

Dear Sir:

On July 28, 1943, this office received copy of order on declaration of taking in the above case. Such order indicated that the sum of \$1.00 had been deposited with the Clerk of the District Court for the Eastern District of Washington, Southern Division, as compensation due the State of Washington for taking of approximately 17 miles of the traveled roadway and right of way for Secondary State Highway No. 11-A between Cold Creek easterly to the Columbia River in Benton County. Subsequent to the receipt of the aforesaid order this office, on August 7, wrote to Mr. Edward J. Crowley, Special Attorney for the U. S. Department of Justice, Empire State Building, Spokane, advising Mr. Crowley that the State was in the process of making a survey and estimating damages for the taking and further advising that as soon as such estimate and survey had been completed the State's position would be made known.

The survey and estimate above-mentioned has now been completed. However, before calling your attention to the particulars thereof we refer you to Section 12, Chapter 207, of the Laws of 1937, wherein Secondary State Highway No. 11-A is by the legislature of the State

of Washington designated to begin at Connell, thence in westerly direction by the most feasible route to Yakima.

Prior to the taking by the United States Government the Director of Highways, pursuant to the above-mentioned law had established, constructed and was maintaining Secondary State Highway No. 11-A between Cold Creek and the Columbia River on the east. In view of the taking by the United States, not only of the present Secondary State Highway No. 11-A between the points mentioned, but the entire area south of the Columbia River through which said highway could be extended, the only alternate routes left in which the highway may now be relocated and reconstructed are the following:

1) The Department of Highways has made a reconnaissance survey for a projected relocation generally running northeasterly from Yakima crossing the Columbia River at a point south of Beverly and continuing generally in an easterly direction to intersect with the present Secondary State Highway No. 11-A east of Connell. The estimated cost for this relocation and reconstruction amounts to \$2,080,500.

2) Another reconnaissance survey had indicated that as an alternative the State may make use of the present Secondary State Highway No. 11-A easterly from Yakima to a point approximately $2\frac{1}{2}$ miles within the boundary of the present Hanford Project. This alternative projected relocation will thence run north $5\frac{1}{2}$ miles to a crossing of the Columbia River in the vicinity of the old Richmond Ferry, thence northeasterly and easterly to intersect with the present Secondary State Highway

No. 11-A west of Connell. The estimated cost of this relocation and reconstruction amounts to the sum of \$939,650.

Either of the above two relocations presuppose that certain rights will be granted by the United States to the State of Washington. In connection with relocation No. 1, it will be necessary for the United States to allow the State of Washington to cross certain lands northeasterly from Yakima now held under lease by the United States and operated as an artillery range.

For the second relocation above-mentioned it will be necessary for the United States by easement or otherwise to permit the State to construct, operate and maintain its highway $2\frac{1}{2}$ miles inside the westerly boundary of the Hanford Project, running northerly from the vicinity east of Cold Creek to the Columbia River.

We have the above-mentioned surveys, relocations and estimates as prepared in detail from examinations made by the engineers in traversing the two above proposed routes. We respectfully suggest that you discuss these matters with Mr. Ramsey and with the U. S. Corps Area Engineer. If you so determine, the writer together with the State highway engineers will be glad to attend any conference wherein settlement of the matter may be fully discussed.

We are assuming of course that you agree with our interpretation of the law as far as compensation may be concerned. This interpretation is to the effect that compensation for the taking of a highway is that amount nec-

essarily to be expended for the relocation and reconstruction of such highway to a grade and standard of the highway taken.

Meanwhile and until we hear further from you we are assuming that our appearance in this case will be preserved and that we will be advised substantially in advance of any trial date to be fixed.

Yours very truly,

ST: gm
HAP

SMITH TROY
Attorney General

cc: Mr. Dinsmore
Mr. Banta
Mr. Kenyon

By: HAROLD A. PEBBLES
Asst. Attorney General

February 26, 1944

Mr. Ivan Merrick, Special Attorney
U. S. Department of Justice
Lands Division
520 Miller Building
Yakima, Washington

Dear Mr. Merrick:

Re: *USA v. State of Washington, Benton County,*
et al. Civil Cause No. 135

We have received no answer to our letter of January 12, 1944, concerning compensation for the taking of Secondary State Highway No. 11-A between Cold Creek and the Columbia River in Benton County, and concerning setting the above case for trial.

It will be sincerely appreciated if you will kindly review this correspondence and let us have your answer to our aforesaid letter at the earliest date possible.

Yours very truly

SMITH TROY

Attorney General

HAROLD A. PEBBLES

Assistant Attorney General

HAP:hec

DEPARTMENT OF JUSTICE

LANDS DIVISION
520 Miller Building
Yakima, Washington

March 25, 1944

REGISTERED

Jerome K. Kuykendall,
Assistant Attorney General,
Olympia, Washington.

Re: *United States of America v. State of Washington
et al.*, Hanford Engineer Works Docket No. 135-2
Tract No. 2

Dear Sir:

The above condemnation proceeding was instituted to acquire certain real property necessary for use in connection with the Hanford Engineer Works Project. I am informed that you are the record owner of the above numbered tract.

On March 2, 1944 a declaration of taking was filed in this action, declaring the fee simple title to such land to be taken by the United States. At the same time there was deposited in court \$1.00, the amount estimated by the

Secretary of War to be just compensation for such land. While the estimate is based upon appraisals by competent and qualified real estate men, it is not binding upon either you or the Government. The exact amount payable for the taking of the land will be determined, either by agreement or trial in said proceeding.

However, a portion of the amount deposited is available for distribution, in the discretion of the Court, to those found to be entitled to payment, without regard to whether or not an agreement has yet been reached, and without prejudice to your right to claim a larger amount. Representatives of the Department of Justice will be glad to cooperate with you and with the court in effecting distribution of a portion of the amount deposited. If you will advise me of your desire to have such monies so distributed, I will prepare the papers required for such purposes. It will be necessary, of course, that arrangements be made for the payment out of the deposit of all liens and encumbrances, such as mortgages and taxes against the land.

You will understand that the filing of the declaration of taking and the deposit of estimated just compensation will not interfere with or prevent the reaching of an agreement with you as to the amount to be paid for the taking of your land. If no agreement can be reached, you are, of course, at liberty to assert your claim before the Court in this proceeding.

Yours very truly,

DAN P. McLAUGHLIN
Special Attorney
Department of Justice

DEPARTMENT OF JUSTICE

LANDS DIVISION
520 Miller Building
Yakima, Washington

March 2, 1944

In reply refer to:
Civil No. 135

Honorable Smith Troy
Attorney General
State of Washington
Olympia, Washington

Attention: Mr. Harold A. Pebbles,
Assistant Attorney General

Re: *United States of America v. State of Washington, et al.*, Civil Cause No. 135

Dear Sir:

With reference to your letter of February 26, 1944, please be advised that under date of January 17, 1944, I forwarded to Mr. Norman Fuller, the Project Manager of the Hanford Engineer Works Project, two copies of your letter of January 12, with the suggestion that he forward the same to the Area Engineer.

This office is now in receipt of a letter from Mr. Fuller stating that his office and the Area Engineer will arrange for attendance at a conference at such date as may be agreed upon. I therefore suggest that you indicate the date and place satisfactory to your office and to the State Highway Commission and advise me.

Respectfully yours,

BERNARD H. RAMSEY
Special Assistant to
The Attorney General

BHR:mp

April 3, 1944

Mr. Dan P. McLaughlin
Special Attorney, Department of Justice
Lands Division,
Miller Building
Yakima, Washington

Re: *USA v. State of Washington, et al.* Civil Cause
No. 351-2 (135), Tract No. 2

Dear Sir:

Your letter of March 25, 1944, enclosing copy of Order on Declaration of Taking covering the right of way of Secondary Highway No. 11-A from the right of way line of Chicago, Milwaukee, St. Paul and Pacific Railway to the westerly or right bank of the Columbia River has been referred to the writer for answer.

We are currently writing to Mr. Ramsey relative to arranging a conference regarding the compensation due the state for the taking of the right of way for Secondary State Highway No. 11-A from Cold Creek to Hanford, and we respectfully suggest that the matter of compensation payable to the state in the above case be discussed at that time.

Yours very truly

SMITH TROY
Attorney General

HAROLD A. PEBBLES
Assistant Attorney General

HAP: hec

April 3, 1944

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Department of Justice, Lands Division
520 Miller Building
Yakima, Washington

Re: *USA v. State of Washington, et al.* Civil Cause
No. 135

Dear Sir:

In reply to your letter of March 2, 1944, regarding a tentative conference for the discussion of compensation to be awarded the state for the taking of Secondary Highway No. 11-A, we suggest that this conference be arranged tentatively for April 21, at which time we shall arrange to have the state highway engineers present.

We ask that you kindly confirm this date at your early convenience.

Yours very truly

SMITH TROY
Attorney General

HAROLD A. PEBBLES
Assistant Attorney General

HAP:hec

DEPARTMENT OF JUSTICE

LANDS DIVISION
520 Miller Building
Yakima, Washington

April 6, 1944

Honorable Smith Troy
Attorney General
State of Washington
Olympia, Washington

Attention: Harold A. Pebbles, Assistant

Sir:

Replying to your letter of April 3, 1944, please be advised that I have contacted the project office of the Army Engineers at Prosser, Washington, and the suggested date of April 21st for conference upon the taking of Secondary Highway No. 11-A is satisfactory to all conferring parties. It is suggested that 2:00 P. M. be set as the time, and the project office at Prosser as the place for such conference. It is believed that by 2:00 P. M. it will be possible for the area engineer and the representatives of the Department of Justice to all be present, and since the records relative to the project boundaries and the record of Secondary Highway No. 11-A are available in the project office but are not available in the Department of Justice offices in Yakima, it is preferable that the conference be held in the project office.

Please advise me whether the place and hour suggested meets with your approval.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
The Attorney General

BHR:jl

April 11, 1944

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Department of Justice, Lands Division
520 Miller Building
Yakima, Washington

Re: *United States v. State, et al.* Civil Cause No. 135
Secondary Highway No. 11-A
Our File No. 11196

Dear Sir:

This is in confirmation of your letter of April 6, 1944, to the effect that a conference will be held at the Hanford Project office at Prosser, Washington, on April 21, 1944, at the hour of two o'clock p. m., with such conference to be attended by the army engineers, the state highway engineers, yourself and the writer.

Very truly yours,

SMITH TROY
Attorney General

By HAROLD A. PEBBLES
Assistant Attorney General

HAP:rmc

April 29, 1944

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Department of Justice, Lands Division
520 Miller Building
Yakima, Washington

Re: *United States v. State, et al.* Civil Cause No. 135
Secondary Highway No. 11-A
Our File No. 11196

Dear Sir:

This is the first opportunity which the writer has had to confirm the understanding with which the state officials left the conference held at the project office in Prosser on April 21, 1944. Accordingly this letter is written in order to bring our file and your file up to date and in order that no misunderstanding will arise as to the subsequent procedure.

Mr. Fuller and Major Riley with your concurrence advised us that they, acting through the war department and the United States Army Engineers, would attempt to return the fee to the right of way for secondary highway 11-A by one of two methods. First, by an amendment of the declaration of taking, or second, by a dismissal of the declaration and case so far as the same concerns said highway, by stipulation of the parties. In the event fee is returned to the state, the state would in turn voluntarily acquiesce in the closing of the roadway providing the same is immediately opened after the war and possession is returned to the state in as good or better condition as it was at the time of the taking.

In the alternative and in the event that the fee is not returned the state is to be advised currently of such de-

cision and the case is to remain in status quo for a period of not less than six months and not more than one year from April 21, 1944, during which time the war department is to advise the state as to whether or not we will be allowed to relocate the highway through the westerly portion of the project in accordance with the proposed relocation routes as indicated on the maps exhibited at the conference. In the event relocation is possible you will advise us as soon as such determination is made and we will then confer as to the United States government's compensation to the state for relocation costs. Naturally we are assuming that you will also advise us if and when the possibility of relocation upon the proposed route is denied.

Your confirmation of the above will be appreciated.

Very truly yours,

SMITH TROY

Attorney General

By HAROLD A. PEBBLES

Assistant Attorney General

HAP:rmc

April 10, 1945

Mr. Frank Reed
Special Assistant to the Attorney General
Department of Justice, Lands Division
520 Miller Building
Yakima, Washington

Re: *United States v. State of Washington, et al.*,
Civil Cause No. 135, Secondary State Highway
No. 11-A. Our File No. 11196

Dear Sir:

You will recall that on April 21, 1944, a conference was held in Prosser, Washington, where at such confer-

ence there were present the United States Acquisition Agent, representatives of this office, of your office, of the U. S. Army Engineers, and of the State Highway Department.

At that time and place matters were fully discussed concerning the probable return to the State of Washington of those portions of Secondary State Highway No. 11-A taken by the United States by declaration filed in the above entitled case. There was further discussed at such conference the proposition of payment to the State for that portion of said highway so taken with such payment based upon costs of relocation upon either of two alternative routes with which you are no doubt familiar.

In view of the fact that the U. S. Army Engineers could make no definite commitment as to the return of the said Secondary State Highway to the State of Washington, it was tentatively agreed in such conference to let the matter rest for a period of not less than six months and not to exceed one year, during which time the U. S. Army Engineers and your office was to come to a determination and advise us accordingly as to whether or not the U. S. Government would be willing to return the said Secondary State Highway No. 11-A to the State of Washington within a reasonable time which would in no event be longer than the period ending at the expiration of six months following the close of the war.

Immediately following the aforesaid meeting we wrote to you under date of April 29, 1944, summarizing the situation as of that date.

You doubtless now realize that the year mentioned in the aforesaid conference, and as mentioned in our said

letter of April 29, 1944, has now practically expired and we have received no notification whatsoever from your office concerning a disposition of the matter. You will further realize that the above entitled case was commenced on or about the 23rd of July, 1943, and since such time there has been no attempt made to definitely dispose of the controversy so far as the State's interest is concerned.

We note that recently Col. F. T. Matthias of the U. S. Army Engineers, has made certain public utterances concerning the fact that the Hanford Project is definitely not a post-war project. We quote from an article appearing in the Yakima Daily Republic under date of March 26, 1945:

“ * * * It is entirely a wartime project with no prospect of its being of any commercial value after the war unless some commercial organization could take the buildings and facilities over and put them to some use. * * * ”

A copy of such article is enclosed herewith. A like article appeared in the Yakima Daily Herald under date of March 27, 1945, a copy of which is also enclosed.

If this is the position now taken by the U. S. Army Engineers, we are at a loss to understand why the Government cannot now stipulate that the State may have this Secondary State Highway returned to it at the close of the war.

Naturally, this latter is our primary objective and the State has no desire to seek alternative costs of relocation, excepting as a last resort.

In view of the record, however, it appears to us that we must insist that the matter now finally be disposed of,

otherwise a longer period of further delay may result to the State's detriment.

In view of all the foregoing, we ask that you advise this office on or before the close of this month as to exactly what course the Government intends to pursue, that is, whether or not you are prepared to enter into a stipulation whereby and whereunder the State of Washington will have its highway returned to it at the close of the war, or in the alternative, whether or not you are prepared to offer a money settlement based upon costs of relocation of the highway in question. You will recall that the State has prepared preliminary surveys indicating costs of relocation over two alternative routes. These costs were fully detailed in our letter of January 12, 1944 to your office to the attention of Mr. Ivan Merrick, Special Attorney. The first alternate, running northeasterly from Yakima, crossing the Columbia River at a point south of Beverly, was estimated in the sum of \$2,080,500.00, and the second alternate route, running easterly from Yakima to a point approximately two and one-half miles within the boundary of the present Hanford Project (in Area B) thence northerly across the Columbia River in the vicinity of the old Richmond Ferry, was estimated in the amount of \$989,650.00.

In the event the Government is not disposed to return the highway, we will appreciate your advice as to whether your office and the proper representatives will now be ready and willing to discuss money settlement on the basis of the relocation costs of one or the other alternative routes proposed. If there is no disposition to discuss settlement on that basis, we ask that you now make the

state some offer, otherwise, in the alternative, we ask that this case be set for trial and that we be advised sufficiently in advance of such trial in order that we may proceed with preparation accordingly.

Yours very truly,

SMITH TROY

Attorney General

By: HAROLD A. PEBBLES

Asst. Attorney General

HAP:BL

CC: Mr. Dinsmore
Mr. Kenyon
Hwy. Dept. Files

July 11, 1945

Mr. Frank Reed
Special Assistant to the Attorney General
Department of Justice, Lands Division
520 Miller Building
Yakima, Washington

Re: *United States v. State of Washington, et al.*,
Civil Cause No. 135, Secondary State Highway No.
11-A, Our File No. 11196

Dear Sir:

Upon receipt hereof it will be sincerely appreciated if you will please be referred to our letter of April 10, 1945 and send us an answer to the same at your earliest convenience.

Yours very truly,

SMITH TROY,

Attorney General

By: HAROLD A. PEBBLES

Asst. Attorney General

HAP:BL

September 5, 1945

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Department of Justice, Lands Division
520 Miller Building
Yakima, Washington

Re: *United States v. State, et al.* Civil Cause No. 135
Secondary Highway No. 11-A Our File No. 11196

Dear Mr. Ramsey:

At the present time the writer has cases set for September 11th, 18th and 25th in eastern Washington. Except for these dates any other time will be agreeable for conference to be held in Portland with you and Mr. Barnes concerning the taking of Secondary State Highway 11-A between Cold Creek to Hanford.

It is respectfully requested that you kindly arrange a date with Mr. Barnes and advise the writer well in advance thereof in order that we may arrange for the attendance of the State Highway Engineers.

Yours very truly,

SMITH TROY,
Attorney General

By: HAROLD A. PEBBLES
Asst. Attorney General

HAP:BL

DEPARTMENT OF JUSTICE

LANDS DIVISION
520 Miller Building
Yakima, Washington

September 7, 1945

In reply refer to:
Docket 135

Mr. Harold A. Pebbles
Assistant Attorney General
Olympia, Washington

Re: *United States of America v. State of Washington, et al.* Secondary Highway No. 11-A Hanford Engineer Works

Dear Mr. Pebbles:

This will advise you that on this date I have written to Mr. E. W. Barnes, Chief of the Portland Sub-Office of the Army Engineers for the purpose of arranging a conference date, and will advise you as soon as I receive a reply to my letter.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
The Attorney General

BHR:ms

DEPARTMENT OF JUSTICE
LANDS DIVISION
520 Miller Building
Yakima, Washington

September 20, 1945

In reply refer to:
Docket No. 135

Mr. Harold A. Pebbles
Assistant Attorney General
Office of the Attorney General
Olympia, Washington

Re: *United States of America v. State of Washington, et al.*, Secondary State Highway No. 11-A

Dear Mr. Pebbles:

This will confirm our prior conversations, and particularly the discussion in the office of the Army Engineers at Portland, Oregon, on September 14 relative to the revesting of title in the State to Highway No. 11-A.

First, let me assure you that the War Department and the Department of Justice are both entirely sympathetic toward the desire of the State to have this highway returned to the State. Both departments are fully advised that the State considers this highway as an indispensable link in the postwar development plans for serving the Columbia Basin area with adequate highways. I assure you that there is no disposition of any government agency to do anything other than cooperate as fully as possible with the State for making possible the completion of these plans.

On the other hand, you will appreciate, in the light of the recent disclosure of the work being done in the Hanford Engineering Works Project, that the Army must

bear in mind the safety factors involved, and indeed I am certain that the State of Washington would not want this highway returned for use by the general public unless and until the Army is convinced that this can safely be done. You will understand that when the Army takes the position that it is impossible to return this road to the State for the use by the general public within the next year or eighteen months that their position is not an arbitrary one but is dictated by the necessity of the situation, and primarily by the safety factors.

I am convinced that if the State of Washington is willing to accept the fact that it will probably be impossible to permit the use of this highway by the general public for a considerable period of time, at a minimum three years after the end of the present emergency, that it will be possible to work out a solution to the problem that will be mutually satisfactory to the Government and to the State of Washington. I am confident, however, that the War Department cannot and will not consider returning the highway to the State for the general use of the public short of the period indicated.

The other matters discussed can, I am sure, be agreed upon if the State is willing to agree to this delay in the return of the highway. I am sure that the War Department would stipulate the dismissal of the present condemnation proceedings for the acquisition of the fee title to the road, and would be willing to amend the proceeding to acquire instead a lease-hold interest coupled with the exclusive possession and use clause for the period agreed upon.

As I understand the position of the State, if this matter can be worked out satisfactorily, the State would be willing to waive any compensation other than the return of the highway with any additions and improvements made by the Government during its period of occupancy.

May I be permitted to express my deep appreciation of the very cooperative attitude shown by the State in this matter, and particularly by your office and by the office of the State Commissioner of Highways. While we have encountered many difficulties in attempting to find a solution in this matter, it has been, and I can assure you will continue to be, a pleasure to work with you in seeking a solution mutually satisfactory to the State and to the Government.

Very truly yours,

BERNARD H. RAMSEY

Special Assistant to
the Attorney General

BHR:mp

ROUGH DRAFT

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WASHINGTON SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Petitioner,

vs.

STATE OF WASHINGTON, *et al.*,

Defendants.

Civil Nos. 135 and 136

STIPULATION

* * * * *

IT IS HEREBY STIPULATED by and between the STATE OF WASHINGTON, acting by and through Smith Troy, its attorney general, and Harold A. Pebbles, assistant attorney general, and the petitioner, UNITED STATES

OF AMERICA, acting by and through Bernard H. Ramsey, special assistant to the attorney general of the United States of America, as follows:

I.

That the Declarations of Taking and the Orders on the Declaration of Taking in each of the above entitled causes, in so far as such Declarations and orders affect the fee to the following described real property, are to be, by the above entitled court by application of Petitioner, cancelled and set aside.

That portion of Secondary State Highway No. 11-A, as the same was constituted at the time of filing of the Declarations of Taking hereinbefore referred to, together with appurtenances thereto, the center-line of which highway is described as follows: Beginning at the quarter corner common to Sections 34 and 35, Township 13 North, Range 24 East of the Willamette Meridian, thence northerly along the line between Sections 34 and 35 to the Section corner common to Sections 26, 27, 34 and 35 in said Township and Range, thence easterly along the line between Sections 26 and 35, 25 and 36 in said Township and Range, and easterly along the line between Sections 30 and 31, 29 and 32, 28 and 33, 27 and 34, 26 and 35, 25 and 36 in Township 13 North, Range 25 East of the Willamette Meridian, and easterly along the line between Sections 30 and 31, 29 and 32, 28 and 33, 27 and 34, 26 and 35, 25 and 36, in Township 13 North, Range 26 East of the Willamette Meridian, and easterly along the line between Sections 30 and 31, 29 and 32, 28 and 33, 27 and 34, 26 and 35 in Township 13 North, Range 27 East of the Willamette Meridian, to the corner common to Sections 25, 26, 35 and 36 in said Township and Range, thence northeasterly to the Columbia River at the ferry landing.

II.

That Petitioner in the above entitled causes will file an Amended Declaration of Taking where and whereby Petitioner will seek and have set over unto it only a leasehold interest in the property above described, with such leasehold interest to be effective and in force from the time of the filing of the Amended Declaration to the expiration of three years following the declaration of the end of the present emergency by the Congress of the United States or by the President of the United States: Provided, however, that such term may be for a lesser period as determined by the Secretary of War.

III.

Upon the expiration of said three-year period all control, possession, use and interest in and to the property above described will terminate and such property shall be returned to the State of Washington under the following terms and conditions and with no further rights or interest in the uses therein or thereto:

(a) The Washington State Highway, being Secondary State Highway No. 11-A, is to be by the United States of America returned to the State of Washington at the end of the aforesaid period in a condition equal to that presently existing as to maintenance and construction;

(b) In addition to the highway right of way included within the description above set forth, the United States will, along with the return of said highway to the State of Washington, convey such additional uniform width of right of way as may at the expiration of said period be necessary to then maintain the highway to its

present widths and standards of construction; the foregoing, however, shall not be construed to obligate the United States to include within any such conveyance such turn-out or parking areas as are not within the highway right of way now in use, nor shall the United States be obliged to reimburse the State of Washington in money for any failure to include such turn-out or parking areas;

IV.

If, at the end of the above-mentioned period, or if at any time the United States takes the fee or possession for a period longer than above set out, the State of Washington shall, immediately upon such taking, or upon redemption of possession by the United States after the expiration of the above mentioned period, be paid its costs of relocating a highway to serve relatively the same purpose heretofore served by Secondary State Highway No. 11-A, with such relocation costs to be based upon the then prevailing costs of construction of a highway to the same standard and grade as the highway taken.

V.

All of the foregoing shall be subject to ratification by the legislature of the State of Washington and shall not become binding upon said State until so ratified.

DATED this..... day of....., 1946.

STATE OF WASHINGTON

By.....

SMITH TROY
Attorney General

.....
HAROLD A. PEBBLES
Assistant Attorney General

UNITED STATES OF AMERICA

By.....
BERNARD H. RAMSEY
Special Assistant to the
Attorney General.

January 24, 1946

Honorable Clarence B. Shain
Director of Highways
Olympia, Washington

Attention: Mr. O. R. Dinsmore
Construction Engineer

Re: *Secondary State Highway No. 11-A, U.S.A. v.*
State of Washington, et al., Docket Nos. 135 and
136 Our File No. 11196

Dear Sir:

In furtherance of the telephone conversation which we held last week we are pleased to enclose in rough draft a contemplated stipulation for submission to the United States Government officials.

The stipulation is not in final form to be transmitted from this office, however it represents in substance the writer's remembrance of the tentative propositions agreed upon at the Portland conference.

It is respectfully suggested that you peruse the form and return same to us with your comments. In the event

you desire a conference, we will be happy to accommodate you.

Yours very truly,

SMITH TROY

Attorney General

By: HAROLD A. PEBBLES

Chief Assistant

Attorney General

HAP:BL

Encl.

April 2, 1946

Mr. Bernard H. Ramsey
Special Assistant to
the Attorney General
Department of Justice
Lands Division
520 Miller Building
Yakima, Washington

Re: Civil Docket Nos. 135 & 136
United States of America v. State of Washington
et al., Secondary State Highway No. 11-A
Our File No. 11196

Dear Mr. Ramsey:

Enclosed herewith you will please find rough draft of a Stipulation to be entered into between the State of Washington and the United States of America concerning the taking of the State's Secondary Highway No. 11-A through the Hanford Project. The Stipulation is drawn in rough draft in order that you may make any suggested changes and return the same to us for final approval and drafting.

You will note the description of the highway which we have set forth in paragraph 1, and while the right of way is not so described in your above civil docket numbers, we deemed it more proper to set out the description of the highway only and we have taken that description from the contents of a stipulation which Norman Fuller originally drew for your office for submission to the State.

In the various clauses which we have set out we have attempted to include all of the matters discussed by the United States and the State authorities in the conference which we held in Portland and which you attended.

Please feel free to make any changes or suggestions and let us have your advices as soon as possible.

Yours very truly,

SMITH TROY

Attorney General

By: HAROLD A. PEBBLES

Chief Assistant

Attorney General

HAP:BL
Encl.

WAR DEPARTMENT
OFFICE DIVISION ENGINEER
North Pacific Division
Portland Real Estate Sub-Office
500 Pittock Block
Portland, Oregon

601.1 (Hanford Engineer
Works—State Hwy. 11A)
NPDRO

26 April 1946

Mr. Bernard H. Ramsey
Special Assistant to
The Attorney General
Lands Division
Department of Justice
520 Miller Building
Yakima, Washington

Dear Mr. Ramsey:

Reference is made to your letter of 8 April 1946 inclosing stipulation submitted by the Attorney General's Office of the State of Washington and embodying agreement relative to state highway 11A acquired in connection with the Hanford Engineering Works Project.

The draft as requested has been examined as to contents and in the present form is not acceptable. The suggested changes, to comply with letter from Office Chief of Engineers dated 18 July 1945, in the opinion of this office are as follows:

I

The description of the road which is set forth on page 1 has been checked against project map and the Declaration of Taking heretofore filed and found to correspond.

II

It will not be necessary to amend the Declaration of Taking. The title can be revested by stipulation and leasehold interest retained by the Government.

III

a. Condition equal to that presently existing relates to time stipulation was executed, which was gravel road when possession was taken by the Government. Today it is a four lane highway. Government should only be obligated to return road in as good or better condition as when taken.

b. Because of changed character of road additional right of way to state would be only just and equitable in view of public interest served by road.

IV

Not acceptable. Restoration costs only as and when the Government acquired the present interest of the State in and to the highway under consideration either by negotiation or condemnation is our obligation. The matter of relocating and constructing a substitute facility should the necessity for so doing then exist can at that time be determined and proper arrangements made in such negotiations or condemnation proceedings.

Further objections in that it obligates the Government to the cost of construction of a four lane highway of a standard and grade much superior to the gravelled highway existing at the time of the initial Governmental possession.

Returned herewith is your copy of stipulation presented to this office for consideration. It is thought the stipulation would be acceptable to the War Department with the listed suggested changes in your revised form.

Very truly yours,

ALBERT R. JACKSON
Project Manager Hanford Engineer Works
Real Estate Division

1 Incl.:
No. 1—Stipulation

DEPARTMENT OF JUSTICE
LANDS DIVISION
520 Miller Building
Yakima, Washington

May 16, 1946

The Attorney General
State of Washington
Olympia, Washington

Attention: Mr. Harold Pebbles

Re: *United States of America v. State of Washington, et al., Hanford Engineer Works*

Gentlemen:

I enclose herewith copy of letter from the War Department relative to the stipulation covering Highway No. 11-A. It is suggested that you carefully consider this letter and the suggestions and objections therein set forth, and that you then transmit to me any suggestions you may have in the matter.

It would appear to be useless to prepare a stipulation form until there has been a meeting of minds between the Highway Commissioner's office and the War Department.

As a middleman, I am personally in no position to suggest what changes might be mutually satisfactory to your Highway Commissioner or to the War Department.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

BHR:mp
Enclosure

STATE OF WASHINGTON
SMITH TROY
Attorney General
Olympia

June 7, 1946

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Department of Justice, Lands Division
520 Miller Building
Yakima, Washington

Re: Civil Docket Nos. 135 & 136 *United States of America v. State of Washington, et al.* Secondary State Highway No. 11-A Hanford Engineering Works Our File No. 11196

Dear Mr. Ramsey:

Needless to say it was with considerable misgivings that the writer and the officials of the Washington State Highway Department read and examined the contents of your letter of May 16th, together with the contents of the carbon copy of the letter dated April 26th from Albert R. Jackson to you. Any misunderstanding as to the substance to be contained in the stipulation has arisen in the office of the United States Army Engineers or in the office

of the manager of the Hanford Project, and not in the office of the State Highway Department or that of the Attorney General of this state.

As a matter of fact, and as you will no doubt recall, the stipulation was prepared from longhand notes which I took at the conference held in Portland in the office of E. W. Barnes, Chief of the Portland Sub-office of the Army Engineers. I remember there were present at such conference, not only you and Mr. Barnes, but representatives of the Army Engineers, the then Hanford Project manager and one or two individuals representing the Department of Justice from the San Francisco office, as well as the undersigned and officials of the Washington State Department of Highways. As point by point was discussed at that conference and conclusions reached and agreed upon by the conferees present, I made notes of such conclusions and agreements, and such, only, have been included in the preferred stipulation which we have sent to you.

As a matter of equity and as the proposition now stands, largely because of attempts on the part of the state officials to cooperate, the state highway involved was taken from and closed to the use of citizens of this state on or about the 1st of February, 1943, and the state has not been compensated for the loss of such use, neither has there been any effort on the part of the Army Engineers, save and except in the conference held on September 14th, last, to place the state in any position whereby it might reasonably expect a return of the highway and compensation for the loss of the use thereof.

Specifically with regard to Mr. Jackson's studied observations, and calling your attention particularly to paragraph designated as II in his letter to you of April 26th, after considerable discussion, it was agreed by all at the conference of September 14th that the declaration of taking should be amended as provided in our proffered stipulation. If there be any doubt about this, please be referred to your letter of September 20th to this office, which letter was written following the conference, where, in the 3rd paragraph from the bottom of your aforesaid letter, on the second page thereof, you stated: "I am sure that the War Department would stipulate the dismissal of the present condemnation proceeding for the acquisition of the fee title to the road, and would be willing to amend the proceeding to acquire instead a leasehold interest coupled with the exclusive possession and use clause for the period agreed upon." In drafting the stipulation we have merely followed the terms agreed upon at the aforesaid conference and your ideas regarding the practicalities and legalities of the situation.

The observations contained in Mr. Jackson's letter under paragraph designated as III, were fully discussed at the aforesaid conference and it was the consensus of opinion of all of the persons present that since the state highway had been taken practically three years prior thereto and the state's citizens deprived of the use thereof, that the state should be in a measure compensated for that taking and loss of use by return of the highway to the state in its then (September 14, 1945) condition, together with such right of way as might be necessary to maintain the same. Furthermore, at such conference, it was felt by

the conferees that the state should not assume any burden which might result from the Federal Government's removal from the entire area and in such removal leaving the present highway in a condition whereby it might be torn up and then be claimed that regardless of that fact the highway would still have been left in a condition equal to that existing on February 1, 1943. It was because of these facts that the parties agreed on September 14, 1945 that the highway be returned to the state in its present condition at the expiration of three years following termination of the present emergency by the President or by Congress; all this aside from the fact that for a three-year period, the termination of which period is entirely unascertainable at this time, the state would remain deprived of the use of the highway.

In his paragraph designated as IV, Mr. Jackson observes that restoration costs, if the Government ultimately retains possession of the road for a longer period or takes the fee thereof, are to be determined as of February 1943, and upon a consideration of relocating and constructing a suitable facility *should the necessity for so doing then exist*.

It was in order to avoid exactly those things mentioned by Mr. Jackson in the aforesaid fourth paragraph that the parties reached the agreement as contained in the proffered stipulation. It should appear extremely unfair to the state, even to Mr. Jackson, for the state to be required to try out a condemnation suit several years from now based (1) on the then necessity for constructing a suitable substitute facility, and (2) based upon the con-

struction costs for such facility, *determined as of February, 1943.*

In the conference it was agreed that the existing highway, or rather the highway taken by the United States, served a particular need for the citizens of the State of Washington and that the taking of not only the highway but also of an entire area through which a similar highway could pass, left only two alternatives to the state for the construction of a substitute facility. If you will kindly be referred to our former letter of January 12, 1944, addressed to Mr. Ivan Merrick, Special Assistant in your office, you will note that the State Highway Department had run two preliminary surveys upon alternate routes, the first of which routes was estimated to cost the sum of \$2,080,500.00, and the second (presupposing the consent of the U. S. Army Engineers that the projected highway could traverse a portion of the closed area of the project at a point approximately 2½ miles within the westerly boundary thereof) at a sum of \$989,650.00.

As you well know, the state has heretofore certainly taken a cooperative attitude with the Army officials relative to the loss of its highway. Certainly that is evidenced by the fact that we have not pressed this matter to its legal conclusion in the courts, and instead we have sought numerous conferences with your office and that of the Army Engineers, seeking settlement on a basis mutually satisfactory and to the end that the United States might be served in its war effort and the citizens of the State of Washington might ultimately be not deprived of their highway and be compensated, at least in a measure, for

the loss of the use thereof. The attitude of Mr. Jackson, the project manager, is surprising and not to say the least, disappointing, particularly when he is apparently instrumental in undoing the work of many competent individuals as well as the work of your office and of this. Under the circumstances it appears that the state has no alternative other than to ask that the condemnation now proceed in a regular course with compensation to be determined by the jury under the rules of law and the cases applicable thereto.

Upon receipt hereof it will be sincerely appreciated if you will kindly advise us as to the status of the calendar in the local Federal Court. We now desire that this case be tried as speedily as possible, however, we anticipate that it will necessitate extended preparation on the part of the state highway engineers. Naturally, most of the summer will be consumed in this and we would therefore desire that the case be tried early during the fall term. We will be grateful for the foregoing information.

Yours very truly,

SMITH TROY

Attorney General

By: HAROLD A. PEBBLES
Chief Assistant Attorney
General

HAP:BL

WAR DEPARTMENT
OFFICE OF THE DIVISION ENGINEER
NORTH PACIFIC DIVISION
500 Pittock Block
Portland 5, Oregon

18 July 1946

Refer to File
No. 601.1 (Hanford Engineer Works
State Highway 11-A) NPDRO

Mr. Smith Troy
Attorney General
State of Washington
Olympia, Washington

ATTENTION: Mr. Harold A. Pebbles

Dear Sir:

This office is in receipt of a copy of letter directed to Mr. Bernard H. Ramsey, Special Assistant to The Attorney General, by your office under date of 7 June 1946.

The objections which this office raised to the stipulation which you submitted to Mr. Ramsey were based on instructions issued by the Office, Chief of Engineers, on 18 July 1945. Inasmuch as the termination of hostilities subsequent to 18 July 1945 may have had some influence upon the plan for the future use of the Hanford Engineer Works Project it is considered advisable to make inquiry to the Office, Chief of Engineers, relative to such matter.

Accordingly, a letter to that effect is being directed to that office and upon receipt of a reply this office will be agreeable to further discussing the matter.

Very truly yours,

DON E. MELDRUM
Division Real Estate Officer

September 23, 1946

Clerk of United States District Court
Eastern District of Washington
Southern Division
Yakima, Washington

Re: Civil Docket Nos. 135 & 136 *United States of America v. State of Washington, et al.* Secondary State Highway 11-A (Hanford Engineering Works) Our File No. 11196

Dear Sir:

The above entitled case has been pending trial in your court for a period of three years, largely as a result of hope upon the part of the attorneys of this office and those of the U. S. Department of Justice, Lands Division, that the matter of compensation for lands taken could be settled on an amicable basis.

All settlement now appears impossible and we desire to arrange with counsel for a date for jury trial. Upon receipt hereof it will be appreciated if you will consult your calendar and advise us as to your next jury term and as to such dates as may be available.

Yours very truly,

SMITH TROY
Attorney General

By: HAROLD A. PEBBLES
Chief Assistant
Attorney General

HAP:BL

cc: Bernard H. Ramsey
Don E. Meldrum

September 23, 1946

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Department of Justice, Lands Division
520 Miller Building
Yakima, Washington

Re: Civil Docket Nos. 135 & 136 *United States of America v. State of Washington, et al.* Secondary State Highway No. 11-A Hanford Engineering Works Our File No. 11196

Dear Mr. Ramsey:

Subsequent to transmittal of our letter of June 7, 1946 concerning the then status of the above entitled case, we received a letter dated July 18th from Don E. Meldrum, Division Real Estate Officer, copy of which letter you no doubt received. In such letter of July 18th Mr. Meldrum advised that he was currently making inquiry of the United States Army Engineers concerning the attitude of that office regarding execution of the stipulation which some time ago we submitted to you as a result of the conference held in the Portland office of the Lands Division, where, in such conference representatives of all of the interested parties were present.

Since receipt of Mr. Meldrum's aforesaid letter of July 18th, no communication or word of any kind has reached us concerning any proposed disposition of this case. We believe you will agree that the state and its officers and representatives have been patient to a fault in that the state highway was taken and closed well over three years ago.

We have reached the conclusion that there is little if any hope of an amicable settlement and therefore we are

currently writing to the Clerk of the United States District Court concerning the setting of this case for trial in accordance with a copy of our letter herewith transmitted.

Yours very truly,

SMITH TROY

Attorney General

By: HAROLD A. PEBBLES

Chief Assistant Attorney General

HAP:BL

Encl.

cc: Don E. Meldrum
500 Pittock Block
Portland 5, Oregon

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

Office of the Clerk

P. O. Box 1493, Spokane 7

September 30, 1946

Honorable Smith Troy
Attorney General, State of Washington
Temple of Justice
Olympia, Washington

Attention: Mr. Harold A. Pebbles

Re: *USA vs. State of Washington, et al.*, No. 135
(Yakima)

Dear Sir:

The earliest date that now seems available for trial of the above entitled cause would be early in January.

Yours very truly,

ARAM A. LAFRAMBOISE, Clerk

AAL:EC

October 9, 1946

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Department of Justice, Lands Division
520 Miller Building
Yakima, Washington

Re: Civil Docket Nos. 135 & 136 *United States of
America v. State of Washington, et al.* Secondary
State Highway No. 11-A Hanford Engineering
Works Our File No. 11196

Dear Sir:

We have just been advised by the Clerk of the United States District Court, Eastern District of Washington, that the above entitled case may be set for trial before a jury during the month of January, 1947.

We desire to try the case at such time, however, in advance of commencing preparation therefore we would appreciate a conference with you concerning whether or not we will be able to agree on the manner and extent of the proof.

Accordingly, we ask that you advise us whether or not you will be available in Yakima for a conference sometime during the next two weeks.

Yours very truly,

SMITH TROY
Attorney General

By: HAROLD A. PEBBLES
Chief Assistant Attorney General

HAP:BL

DEPARTMENT OF JUSTICE
LANDS DIVISION
512 Miller Building
Yakima, Washington

October 14, 1946

Honorable Smith Troy
Attorney General, State of Washington
Olympia, Washington
Attention: Mr. Harold A. Pebbles
Chief Assistant Attorney General

Dear Sir:

Reference—*United States v. State of Washington, et al.*,
No. 135, Hanford Engineer Works.

Receipt is acknowledged of your letter of October 9, 1946, requesting a conference in Yakima prior to the trial of this proceeding. You are advised that this office is also in receipt of a letter from the Attorney General's office on this matter reading in part as follows:

"For your information, and you may say it to the Attorney General of the State of Washington, the apparent delay in reaching some agreement on behalf of the War Department with the State of Washington is due to the fact that this project may come under the jurisdiction of the Atomic Energy Commission, recently created by Congress, the members of which have not yet been appointed, and their ideas, not yet formulated, may be entirely different from the present views of the War Department. For this reason the Department desires that the road case be continued as long as possible or until such time as suitable action is taken."

I am also in receipt of a letter from the Army Engineers relative to this matter which states that that office had been advised by the Office of the Chief of Engineers that the entire matter would be discussed with the Manhattan District and appropriate instructions would then

be issued. The letter goes on to state that since the highway is interwoven with the future plans of the Hanford Engineer Works Project, a decision of this nature is grave and will require some time. Under these circumstances, I am wondering whether the State of Washington would be willing to await the final clarification of the issue.

It is now apparent that the attitude of the Portland office of the Army Engineers has not been due to any lack of desire on their part to work out the solution, but has been due to the fact that in the present uncertainty as to where the control of this project rests in the immediate future. No doubt the conference with the officials of the Manhattan District will determine whether the control of the Area is to be vested in the Atomic Energy Commission or is to remain in the hands of the War Department.

I am extremely hopeful that when this question is once determined we will be able to work out a satisfactory solution. I would appreciate being advised as early as possible as to whether the State of Washington will insist on the trial of the case during the January term. As you know, there will be a vast amount of work to be taken care of preliminary to the trial itself.

When these matters have been determined, I will, of course, be glad to meet with you at any time in an effort to determine the issues involved in the case itself if it is to go to trial.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

BHR:mp

October 18, 1946

Honorable Clarence B. Shain
Director of Highways
Olympia, Washington

Attention: Mr. O. R. Dinsmore
Construction Engineer

Re: SSH 11-A, Hanford Engineering Works—Civil
Docket Nos. 135 & 136
USA v. State of Washington Our File No. 11196

Dear Sir:

Attached you will find copy of the letter just received from Bernard H. Ramsey, Special Assistant to the Attorney General, concerning the taking of Secondary State Highway No. 11-A by the United States Government, which taking you will recall has often been the subject of conversation between us.

Upon receipt of the attached copy, it is respectfully suggested that you review the same and advise the undersigned as to what position the State should take in the matter.

Yours very truly,

SMITH TROY
Attorney General

By: HAROLD A. PEBBLES
Chief Assistant
Attorney General

HAP:BL
Encl.

November 14, 1946

Mr. Bernard H. Ramsey
Attorney, U. S. Dept. of Justice
Lands Division
Miller Building
Yakima, Washington

Re: SSH 11-A, Hanford Engineering Works—Civil
Docket Nos. 135 & 136
USA v. State of Washington Our File No. 11196

Dear Sir:

We have referred the substance of your letter of October 14, 1946, to the State Highway Officials and those officials have requested that we seek further consultation with you about the disposition of the above case.

You may therefore expect to hear from us within the near future relative to the setting of a time and place for conference in Yakima. Meanwhile, if at any time you are able to journey to Olympia, we will appreciate your advice as to the time and place when we could arrange a conference with you here.

Yours very truly,

SMITH TROY
Attorney General

By: HAROLD A. PEBBLES
Assistant Attorney General

HAP:bn

NOTICE OF SETTING OF TRIAL

UNITED STATES DISTRICT COURT
SOUTHERN DIVISION, EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA

vs.

STATE OF WASHINGTON, et al.,

} No. 135

To B. H. Ramsey, Attorney, Miller Bldg., Yakima, Wash.
Harold A. Pebbles, Chief Asst. to Atty. Gen., Temple
of Justice, Olympia, Wash.

TAKE NOTICE that the above-entitled case has been
set for trial in said Court at Yakima, Washington, on Wed-
nesday, January 15, 1947, at 10:00 A. M.

Dated Dec. 11, 1946

A. A. LAFRAMBOISE, Clerk
By MARIE EALY, Deputy

December 16, 1946

Mr. Bernard H. Ramsey
Special Assistant
U. S. Department of Justice
Lands Division
Miller Building
Yakima, Washington

Dear Mr. Ramsey:

In furtherance of our long distance telephone con-
versation on Saturday, December 14, 1946, for the reason
that it will be practically impossible for parties to pre-
pare the necessary scientific engineering data for presen-
tation at trial on January 15, 1947, (the date now set for
trial of above entitled case) we are enclosing herewith
the original and three copies of a stipulation and the orig-
inal and three copies of an order striking the case from

the coming jury calendar and providing that the same may be later called up for trial upon motion of either of the parties.

Upon receipt of the enclosure, we ask that you kindly present to his honor, Judge Driver, the original stipulation and order. After you have secured the signature of the judge upon the order, kindly forward unto us one of the copies of the order, indicating thereon the date of the court's signature and also send us an executed copy of the stipulation.

We have instructed the Department of Highways to proceed with making preliminary survey of a contemplated route of secondary State Highway 11a skirting the edges of Area B. As we have previously advised you, the highway department, in the making of each survey, will take sufficient topography, elevations, etc., in order to arrive at an estimated cost of construction on the proposed route. As soon as this data has been furnished to us by the highway department, we will immediately communicate with you in order to determine whether or not the parties will then be able to agree upon preparation of further factual data.

Yours very truly,

SMITH TROY

Attorney General

By: HAROLD A. PEBBLES

Assistant Attorney General

HAP:bn
Encls.

DEPARTMENT OF JUSTICE

LANDS DIVISION
512 Miller Building
Yakima, Washington

December 31, 1946

Mr. Harold A. Pebbles
Assistant Attorney General
State of Washington
Olympia, Washington

Re: *United States of America v. State of Washington, et al.*, Hanford Engineer Works

Dear Mr. Pebbles:

Pursuant to your letter of December 16, 1946, I enclose herewith executed copies of the Stipulation and Order entered in the above entitled case on December 23, 1946.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

mp
Encls.

April 12, 1947

Mr. Bernard H. Ramsey
Special Assistant, Lands Division
U. S. Department of Justice
Miller Building
Yakima, Washington

Re: *U.S.A. v. State of Washington* Civil Docket Nos.
135 & 136 SSH 11-A

Dear Mr. Ramsey:

Since leaving the office of the Attorney General, I have been designated as a special assistant for purposes

of handling the above entitled case until the same is in a position to be closed.

We have just been advised by the engineers of the state Highway Department that the state surveys and estimated costs of relocation of the above designated secondary state highway outside of the prohibited area of the Hanford Project will be completed during the latter part of this month or during the first part of next month at the latest.

As soon as the surveys and estimates are completed and in accordance with our last discussion with you, we desire to hold a conference in your office in Yakima in order that we may iron out several matters regarding proof of compensation and damages to the state in the above entitled case.

It will be appreciated therefore if you will kindly hold yourself in readiness for such conference. I will write to you immediately upon being able to ascertain a definite date.

I do not know the status of the district court calendar in Yakima and I will appreciate your advices as to whether we will now be able to set this case for trial during the latter part of May or during the month of June.

I have in mind that as soon as it appears that the Highway Department surveys and estimates will be completed, we should probably note the case for trial calendar in order that an early trial may be secured.

Thank you for your kind attention.

Yours very truly,

PEBBLES AND KUYKENDALL
HAROLD A. PEBBLES

HAP:is

DEPARTMENT OF JUSTICE

LANDS DIVISION
512 Miller Building
Yakima, Washington

April 14, 1947

Pebbles and Kuykendall
Attorneys at Law
Capitol Theatre Building
Olympia, Washington

Attention: Mr. Harold A. Pebbles

Re: *United States of America v. State of Washington, et al.*, Civil No. 135, Secondary State Highway No. 11-A

Gentlemen:

Replying to your letter of April 12, 1947, you are advised that I will be very glad to confer with you relative to this matter at such time as your surveys and estimates are completed.

I am uncertain as to the condition of the Court's docket which has to date been badly crowded. However, I assume that a satisfactory trial date can be secured.

Please advise me when you have determined a satisfactory date for our conference.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

BHR:mp

April 16, 1947

Honorable Clarence B. Shain
Director of Highways
Transportation Building
Olympia, Washington

Attention: O. R. Dinsmore, Construction Engineer

Re: *USA v. State of Washington* SSH 11-A

Dear Sir:

In accordance with our letter of April 12, 1947, to Mr. B. H. Ramsey, we have received his answering letter, copy of which you will find enclosed.

Accordingly it will be appreciated if you will kindly advise us when the surveys and estimates are completed in order that we may arrange for the proposed conference.

Yours very truly,

PEBBLES AND KUYKENDALL
HAROLD A. PEBBLES

HAP:is
Encl.

November 26, 1947

Mr. Bernard H. Ramsey
Special Assistant
U. S. Department of Justice
Lands Division
Miller Building
Yakima, Washington

Re: S.S.H.-11A, Hanford Engineering Works—*U. S. A.
v. State of Wash.-Benton County et al.*
U. S. Civil Docket No. 135

Dear Sir:

In accordance with the last paragraph of our letter of December 16, 1946 the Washington State Highway De-

partment has now prepared surveys, taken topography, elevations, cross sections, etc. and has arrived at estimated costs of newly relocating that portion of Secondary State Highway 11-A taken from the state in the above entitled action.

You will recall that pursuant to stipulation between us the above case was stricken from the jury trial calendar the same to be called up and set for jury trial upon motion of either party.

Upon receipt hereof we respectfully request that you advise us as to when a jury will be available for trial of this case and as to dates satisfactory to you.

Meanwhile if you and your engineers and I and engineers representing the state can arrange a conference we may be thereby enabled to agree on many facts or at least upon the method and extent of proof necessary to establish the relocation costs. Please write us upon this.

Yours very truly,

PEBBLES AND KUYKENDALL
Special Assistants to the
Attorney General

HAP:wlp

LANDS DIVISION
512 Miller Building, Yakima, Washington

December 5, 1947

Mr. C. U. Landrum
Special Attorney
Department of Justice
Detroit Lakes, Minnesota

Dear Gus:

I enclose herewith a letter recently received from Pebbles, relative to *United States vs. State of Washington*,

Civil No. 135, Highway 11-A. As you will note, Mr. Pebbles desires to hold a conference in regard to this matter; and further desires to fix a trial date.

Please advise either Mr. Pebbles or me what date will be convenient to you for such a conference.

Best personal regards.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

BHR:mjd
cc:Pebbles
Enclosure

January 7, 1948

Mr. Bernard H. Ramsey
Special Assistant
U. S. Department of Justice
Lands Division
Miller Building
Yakima, Washington

Re: S.S.H.-11A, Hanford Engineering Works—*U. S. A.
vs. State of Wash.-Benton County et al.*
U. S. Civil Docket No. 135

Dear Sir:

In response to our letter of November 26 we have received a copy of your letter of December 5 to Mr. C. U. Landrum, special attorney for the Department of Justice.

At date of this writing we have not received any communication from Mr. Landrum, nor have we heard further from you.

Please be advised that we must have your answer to our aforesaid letter of November 26, 1947 on or before

the end of this month. Otherwise we shall be obliged to apply to the district court for setting of the above case for trial.

Yours very truly,

PEBBLES AND KUYKENDALL

Special Assistants to
the Attorney General

HAP: wlp
cc-O. R. Dinsmore
Construction Engineer
Department of Highways
Transportation Building
Olympia, Wash.

DEPARTMENT OF JUSTICE

LANDS DIVISION
Yakima, Washington

January 12, 1948

Pebbles and Kuykendall
Attorneys at Law
Capitol Theatre Building
Olympia, Washington

Attention Mr. Pebbles:

Re: S.S.H.-11A, Hanford Engineering Works—*U. S. A.
vs. State of Washington-Benton County et al.*
U. S. Civil Docket No. 135

You are advised that I am in receipt of a letter from Mr. C. U. Landrum, Special Attorney Department of Justice, in which he states that he is ready to go to trial on the above designated case at any time convenient to you. He further states that he does not believe that anything worth while can be accomplished by meeting with you and the Highway officials prior to trial.

I do not anticipate that I will participate actively in this case. Due to the press of other trial work I requested the Department to assign this case to another attorney and Mr. Landrum was designated.

I suggest that you secure a trial date on this case and advise as soon as possible in order that I may let Mr. Landrum know in time to make the necessary arrangements to be in Yakima for the trial.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

DEPARTMENT OF JUSTICE
LANDS DIVISION
512 Miller Building, Yakima, Washington

November 29, 1948

Pebbles and Kuykendall
Attorneys at Law
Capitol Theatre Building
Olympia, Washington

Attention: Mr. Harold A. Pebbles

Re: *United States of America v. State of Washington, et al.*

Civil No. 135, Secondary State Highway No. 11-A

Gentlemen:

I am in receipt of a letter from the attorney general's office insisting that this case has been dragging for four and a half years, and that it is imperative as a matter of policy that it be disposed of without further delay. Under these circumstances I propose, if such action is satisfac-

tory to you, to ask that the case be set for the January term of court in Yakima.

I am assuming that you are still handling this case for the State of Washington, but would appreciate being advised as to that matter, and also as to your views in regard to an early trial date.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

BHR:eh

January 26, 1949

Mr. Bernard H. Ramsey, Attorney
U. S. Department of Justice
Lands Division
Miller Building
Yakima, Washington

Re: SSH 11-A, Hanford Engineering Works
Docket Nos. 135 and 136, *United States of America
vs. State of Washington*

Dear Sir:

The undersigned has been presented the file on this case and has been requested to complete the same at the earliest possible date.

We note therein a letter from you addressed to Pebbles and Kuykendall dated November 29, 1948, whereby you asked permission to set the case for the January term of court in Yakima.

In reviewing the file we note that a relocation of said highway has been made by the State, however, certain portions of said relocation are through certain restricted

areas of the Atomic Energy Commission. Therefore, before we can proceed, we must secure the approval of said commission to have the highway located therein. The State Highway officials are meeting with the officials at Richland on February 9 to determine whether that approval can be given. In the event the Atomic Energy Commission refuses to permit the encroachments of said highway in the restricted areas, it will be necessary for the State to run a complete new location of the highway, which will, no doubt, entail a delay until, at least, next Fall. Under the circumstances we have no recourse but await the outcome of the aforesaid conference before proceeding further with this matter.

We hope to be in Yakima sometime next month and would appreciate a conference with you regarding this case.

Yours very truly,

SMITH TROY

Attorney General

By: ELROY F. WIEHL

Assistant Attorney General

ST:LN

EFW

April 27, 1949

Mr. Bernard H. Ramsey, Attorney
U. S. Department of Justice
Lands Division
Miller Building
Yakima, Washington

Re: SSH 11-A, Hanford Engineering Works, Docket
Nos. 135 & 136, *United States of America vs. State
of Washington*

Dear Sir:

We are in receipt of a Notice of Setting for Jury Trial in the above entitled matter. Said Notice sets the trial for Wednesday, May 25, 1949. However, we do not believe that we will be prepared to present our case at that time for the following reasons:

First, you will recall that on January 25 we wrote you stating that it was necessary to secure the approval from the Atomic Energy Commission for certain portions of the relocation of the above highway. Although every effort has been made to obtain this approval, we have not as yet received official approval from said Commission. We have been informed that Chairman Lilienthal of said Commission has given his unofficial approval to the state's relocation, but as yet we have had nothing official on the same.

Secondly, we have an extremely full court calendar for the month of May and are scheduled to have a condemnation case in Grant County on the 24th of May. We believe that said case will be completed on that date, but we dislike having our schedule of court cases run so close together that there may be a conflict.

Therefore, we trust that you will see your way clear to allow us a continuance in this matter until the next term of court, at which time we hope to have full approval for the relocation of the highway and will be ready to try the case.

Trusting to hear from you soon regarding the above, we are

Yours very truly,

SMITH TROY

Attorney General

By: ELROY F. WIEHL

Assistant Attorney General

ST:LN

EFW

DEPARTMENT OF JUSTICE

LANDS DIVISION

512 Miller Building

Yakima, Washington

May 4, 1949

Smith Troy, Attorney General
State House,
Olympia, Washington

Attention: Mr. Elroy F. Wiehl,
Assistant Attorney General

In re: SSH 11-A, Hanford Engineering Works, *Dockets*
#135 and #136 *United States vs. State of Wash-*
ington, and your letter of April 27, 1949

Dear Sir:

I have taken up the contents of your letter with Judge Driver, and he has indicated that he is willing to grant the continuance you request in the above entitled

case. He suggests that you prepare a written Motion for Continuance based upon the grounds set forth in your letter, and I assume that it would be advisable to forward the same to this office for acknowledgment of service.

If you care to do this, I will acknowledge service thereon and forward to the clerk of the District Court at Spokane.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

BHR:eh

May 17, 1949

Mr. Bernard H. Ramsey, Attorney
U. S. Department of Justice
Lands Division
Miller Building
Yakima, Washington

Re: SSH 11-A, Hanford Engineering Works, Dockets
135 and 136, *United States of America vs. State of
Washington*

Dear Sir:

We are enclosing herewith original and copy of Affidavit in Support of Motion for Continuance, Motion for Order of Continuance and Order of Continuance in the above entitled matter.

We would appreciate your acknowledging receipt on the original of the same and then forward them to the Clerk of the Court for filing.

We trust that these papers are in order and wish to thank you for your cooperation in this matter.

Yours very truly,

SMITH TROY

Attorney General

By: ELROY F. WIEHL

Assistant Attorney General

ST:LN

EFW

encls.

UNITED STATES ATOMIC ENERGY COMMISSION

HANFORD OPERATIONS OFFICE

P. O. Box 550

Richland, Washington

September 2, 1949

Mr. W. A. Bugge
Director of Highways
Department of Highways
Transportation Building
Olympia, Washington

Attention: Mr. O. R. Dinsmore
Assistant Director

Dear Mr. Bugge:

We have delayed answer to your letter of August 19, awaiting recommendation from a scientific consultant group which has been reviewing the possibility of a Wahluke access road. The recommendations of this committee have now been received by the Commission, and a decision based on the recommendations has been reached.

It has been determined that there is no objection to construction of a road crossing the Columbia River by ferry at Vernita and proceeding in a northerly direction

to Beverly and thence eastward to Othello. However, due to the possible hazards involved, it is not considered advisable to allow a road to be constructed that would traverse Wahluke Slope in an easterly direction south of the ridge of the Saddle Mountains.

You may be assured that the Commission gave careful consideration to the effect of this decision upon the inhabitants and property owners in the areas surrounding the Hanford Works.

Continuous study and remedial measures are being devoted to safety problems and construction of a direct highway through the "Control Zone" and the matter can be re-examined after a few years.

Sincerely yours,

FRED C. SCHLEMMER
Manager

DEPARTMENT OF JUSTICE

LANDS DIVISION
512 Miller Building
Yakima, Washington

October 27, 1949

The Attorney General
State of Washington,
Olympia, Washington

Re: *United States of America, Petitioner, vs. State of Washington, Defendant*; Civil #135, In the District Court of the United States for the Eastern District of Washington, State Highway 11-A

Sir:

This office is again being urged by the Attorney General of the United States to bring this matter on for trial.

The case has been on the docket of the United States District Court for six years, and it does not appear that further delay in disposing of the matter can be justified. The matter was taken off of the docket the last time it was set until the position of the Atomic Energy Commission with regard to a possible road across the Waluke Slope could be determined. It has now been determined by the Atomic Energy Commission that, for reasons of security and public safety, the road across the Wahluke Slope cannot be approved by the Commission.

I would appreciate being advised by your office as to whether it will be possible to stipulate the fixing of an early trial date in this matter.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

BHR:eh

HEADQUARTERS
2D INFANTRY DIVISION
Fort Lewis, Washington

Department of Highways
Office of District Engineer
P. O. Box 52
Yakima, Washington

ATTN: R. H. Pyle
District Location Engineer

Dear Sir:

Reference is made to your inquiry of November 17th in regard to two routes through the Yakima Firing Range

being considered for a highway route from Yakima to Beverly.

The purpose for which the range is used, namely artillery and tank fire, prohibits the Department of the Army from consenting to any plan for the construction of a highway within the foreseeable future.

Sincerely yours,

B. D. REAMS
Capt. AGD
Asst. Adj. Gen.

1 Incl
Dwg SE-RE-323

November 17, 1949

Major Bell
Post Engineer
Fort Lewis, Washington

Dear Sir:

This department is making a *reconnaissance survey* to determine if there is a feasible location for a direct highway route from Yakima to Beverly. On your drawing number SE-RE-323 I have indicated two routes which have been projected from topographic maps.

If these routes are found to be practical after field inspection we would like to include in our reconnaissance report an expression from you, or other proper authority, regarding the possibility of either route being used as a highway across the Firing Center. It should be understood that this information will be used only in a preliminary report and that the actual location, if any, may not be made for some time.

Any information you may be able to give will be appreciated. Will you please return the attached map with your reply.

Very truly yours,

T. P. DOYLE
District Engineer

By: R. H. PYLE
District Location Engineer

TPD
RHP:bb
attachment

December 7, 1949

Mr. Bernard H. Ramsey
Special Assistant to the Attorney General
Lands Division, 512 Miller Building
Yakima, Washington

Re: *United States of America, Petitioner, vs. State of Washington, Defendant*; Civil # 135, in the District Court of the United States for the Eastern District of Washington, State Highway 11-A

Dear Sir:

This will acknowledge receipt of your letter of October 27th requesting when the above matter can be set up for hearing. As you know, the previous hearing was postponed until we could determine whether we could re-route Secondary State Highway No. 11-A along the Wahluke Slope. The Atomic Energy Commission, through Mr. Fred C. Schlemmer, manager of the Hanford Project, on September 2nd, 1949, notified the State Highway Department that it would be impossible for the state to con-

struct a road along the Wahluke Slope at the present time. He stated that they had no objection to the construction of a road crossing the Columbia River by ferry at Vernita and proceeding in a northerly direction to Beverly and thence eastward to Othello.

He further stated that because of continuous study and remedial measures being devoted to safety problems and construction, it might be possible for this matter to be re-examined after a few years and a highway allowed to traverse the Wahluke Slope. Accordingly, the State Highway Department is now in the process of running a reconnaissance upon the route suggested by Mr. Schlemmer in said letter. Upon the completion of this survey, the state should be ready to bring this matter on for trial. At that time we shall notify you and stipulate the fixing of an early trial date.

Trusting this will be satisfactory to you, we are

Yours very truly,

SMITH TROY

Attorney General

By: ELROY F. WIEHL

Assistant Attorney General

ST:LB

EFW

cc: Mr. Dinsmore
Mr. Doyle

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
OFFICE OF THE CLERK
P. O. Box 1493, Spokane 7

October 17, 1950

Mr. Smith Troy
Attorney General
Temple of Justice
Olympia, Washington

In re: *USA vs. State of Washington, et al.* #135

Dear Sir:

On the representation that Mr. Ramsey is in the hospital and that you have consented that the above cause be vacated, the setting of the above case for Nov. 1, 1950 is vacated.

Please confirm addressing me at Yakima.

Yours very truly,

ARAM A. LaFRAMBOISE, Clerk

AAL:EC

CC to Mr. B. H. Ramsey, Special Assistant to the Attorney General
Lands Division, Department of Justice
Miller Bldg.
Yakima, Washington

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
OFFICE OF THE CLERK
Yakima, Washington

October 19, 1950

Pebbles and Kuykendall
Attorneys at Law
Capitol Theatre Building
Olympia, Washington

Attention: Mr. Pebbles

Re: *USA v. State of Washington, et al.*
No. 135

Dear Sir:

The above entitled cause, which was originally set for trial on November 1, 1950, has been vacated and stricken from the trial calendar due to the fact that Mr. Bernard H. Ramsey, attorney for the government, is ill and unable to appear in court.

You will be notified when the case has been re-set for trial.

Yours very truly,

A. A. LaFRAMBOISE, Clerk
By MARIE EALY, Deputy.

fme

November 27, 1950

Department of Justice
Lands Division
512 Miller Building
Yakima, Washington

Re: *U. S. v. State of Washington*
No. 135 (SSH 11-A)

Gentlemen:

Upon receipt hereof it will be sincerely appreciated if you will kindly inform us as to the condition of Mr. Ramsey and as to whether or not he is now sufficiently recovered so that we may together apply for a new trial date for the trial of the above case.

If Mr. Ramsey is not expected to be able to participate in the trial of this case, please inform us as to who we should get in touch with in order to proceed with the trial setting. Your attention will be sincerely appreciated.

Yours very truly,

SMITH TROY

Attorney General

By: HAROLD A. PEBBLES

Special Asst. Attorney General

HAP:wlp

DEPARTMENT OF JUSTICE
LANDS DIVISION
512 Miller Building, Yakima, Washington

November 29, 1950

Harold A. Pebbles
Special Asst. Attorney General
Capitol Theatre Building
Olympia, Washington

Re: *U. S. v. State of Washington*
No. 135 (SSH 11-A)

Dear Sir:

Reference is made to your letter of November 27th concerning the above-entitled case.

Mr. Ramsey is still in the hospital, and it is not known at this time whether he will participate in the trial of this case. As of this date no arrangement has been completed to turn the matter over to someone else.

As soon as we are able to discuss this matter with Mr. Ramsey we will be glad to inform you.

Very truly yours,

BERNARD H. RAMSEY
Special Assistant to
the Attorney General

eh

February 7, 1951

Department of Justice
Lands Division
512 Miller Building
Yakima, Washington

Re: *U. S. v. State of Washington*
No. 135 (SSH 11-A)

Gentlemen:

Your letter of November 29 informed us that Mr. Ramsey was still in the hospital, and that you would discuss with him the setting of the above case for trial.

We have not heard from you and we are wondering at this time whether or not we will be able to get a trial date soon. Please inform us.

Yours very truly,

HAP:wlp

HAROLD A. PEBBLES

Department of Justice
Lands Division
512 Miller Building
Yakima, Washington

March 27, 1951

Re: *U. S. v. State of Washington*
No. 135 (SSH 11-A)

Gentlemen:

Please be referred to our letter of February 7, 1951, in which we request information as to a trial date on the above case. We would like to get the trial of this matter out of the way and would appreciate hearing from you in the immediate future.

Yours very truly,

wlp

HAROLD A. PEBBLES

Appendix D

APPENDIX "D"

**HIGHWAY DEVELOPMENT
COLUMBIA BASIN JOINT INVESTIGATIONS**

Problem 19

United States Department of the Interior
Bureau of Reclamation, Washington, D. C. 1945

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

November 1, 1944

Commissioner H. W. Bashore
Bureau of Reclamation
Washington, D. C.

Dear Mr. Bashore: I transmit the final report on Problem No. 19 of the Columbia Basin Joint Investigations and recommend that it be published.

The road net advocated by the problem committee apparently would afford maximum economy, safety, and convenience. Particularly interesting are the proposals concerning tertiary roads.

Sincerely yours,

HARLAN H. BARROWS
Planning Consultant

JOINT INVESTIGATIONS COLUMBIA BASIN PROJECT

This is one of a series of reports on problems studied by participants in the Joint Investigations to plan for the successful development and settlement of the Columbia Basin Project in the State of Washington. Proposals of the report are directed toward development of a road network which would incorporate a maximum degree of safety, service, and economy.

The investigators recommend, first, that the network of State highways proposed by the Washington State Department of Highways be adopted as the plan for new highways in the project area; second, that prior to preparation of the farm plat for any block through or adjacent to which the route of a proposed State highway passes, the Bureau of Reclamation advise the State Department of Highways, the county commissioners of the appropriate county or the county engineer, and that, cooperatively, decision be reached as to the best specific location for the highway or road through the area in question; third, that right-of-way for such locations be reserved in the plats.

The reports on problems of the Columbia Basin Joint Investigations will aid the Bureau of Reclamation greatly in formulating plans and programs for the settlement and operation of the Columbia Basin Project. The Bureau deeply appreciates the assistance rendered by all who participated in the investigations.

The publication of the reports is not intended to indicate, of course, that suggestions and recommendations contained in them necessarily will be approved and carried out by the Bureau.

Similarly, other agencies and organizations that designated representatives to help in the work of the investigations are not bound in any way by the results of that work.

H. W. BASHORE
Commissioner.

September 1, 1945

STATEMENT OF PROBLEM 19

To plan desirable additions to and modifications of the road net in adjustment to the irrigation system, village sites and patterns, farm hamlets (farmstead clusters), and other features, and to prospective transportation needs.

INVESTIGATORS AND ADVISERS^①

C. E. FRITTS,^② State Department of Highways, Olympia, Wash., Leader.

HENRY DANEKAS, *Road Commissioner*, Adams County, Ritzville, Wash.

DELBERT PENCE, *Road Commissioner*, Adams County, Cunningham, Wash.

EDWARD F. WAHL, *Road Commissioner*, Adams County, Ritzville, Wash.

CLEMENT O'NEIL, *Road Commissioner*, Grant County, Almira, Wash.

J. B. MARTIN, *Road Commissioner*, Grant County, Quincy, Wash.

CHRIS LARSEN, *Road Commissioner*, Grant County, Wilson Creek, Wash.

① Fourteen of the 15 members of the committee approved the report. K. C. Miller neither approved nor dissented.

② Burwell Bantz, Director, State Department of Highways, represented the Department after the assignment of Mr. Fritts to the armed forces.

- H. L. BLANTON, *County Engineer*, Franklin County, Pasco, Wash.
- G. S. COOPER, Chicago, Milwaukee, St. Paul & Pacific Railway, Seattle, Wash.
- E. B. DUNCAN, Great Northern Railway Co., St. Paul, Minn.
- W. P. STAPLETON, Northern Pacific Railway Co., Seattle, Wash.
- K. C. MILLER, Spokane, Portland & Seattle Railway System, Portland, Ore.
- JOSEPH W. JARVIS, Union Pacific Railroad System, Omaha, Nebr.
- H. A. PARKER, *Irrigation Engineer*, Bureau of Reclamation, Ephrata, Wash.
- PAUL J. RAVER, *Administrator*, Bonneville Power Administration, Portland, Ore.

ACKNOWLEDGMENTS

The opportunity to plan highways and roads for the Columbia Basin awakened the interest of many agencies and individuals.

Statewide interest in the program of investigations for the Columbia Basin led the Washington State Legislature in 1939 to authorize a study by the Department of Highways of the system of State highways needed for the project area. The study was made and a report prepared by C. E. Fritts and Calvin E. Fox of the Highway Planning Division. Their report was submitted to the 1941 State Legislature by James A. Davis, acting director of highways. Following approval of the plan in principle by the Legislature, the report was presented as the State's contribution to Problem 19. That contribution has been incorporated in the report presented here.

The report also deals with county or tertiary roads. Valued assistance in formulating the plans for such roads has been given by the county road commissioners of Grant and Adams Counties, the county engineer of Franklin County, and engineers of the State Department of Highways. Aid also has been provided by participants in the joint investigations concerned with plans for the irrigation system, farm management, settlement patterns, farm hamlets, village sites, and townsites. Important contributors in these respects were H. A. Parker, E. N. Torbert, Marion Clawson, Lloyd Fisher, and Walter Goldschmidt.

The report was prepared by V. M. Throop and E. N. Torbert.

TABLE OF CONTENTS

	Page
Conclusions and Recommendations.....	
Chapter I. Need and Opportunity for Planning.....	
Chapter II. The Recommended State Highway System	
General character of the system.....	
New routes in detail.....	
Primary routes	
Secondary routes	
Engineering standards for proposed highways	
Estimated cost and revenues of proposed	
highways	
Conclusions	
Chapter III. Proposed County Road Systems.....	
Objectives and principles.....	
Economy	
Adjustment to main canals.....	
Spacing of principal service roads.....	
Other roads	
Combined economies	
Convenience and safety.....	
Access to individual farms and focus on	
local centers	
Number of crossroads.....	
Proximity to hard surface roads.....	
Safety of vehicle operation.....	
Application of principles.....	
Alternative sample plans.....	
Recommended procedure	

LIST OF FIGURES

Figure No.		Page
1	Existing and proposed State Highways, Columbia Basin Project area.....	
2	Sequence of development by irrigation blocks	
3	Typical county road layout.....	
4	Tertiary Road Plan A.....	
5	Tertiary Road Plan B.....	
6	Tertiary Road Plan C.....	

CONCLUSIONS AND RECOMMENDATIONS

An unusual opportunity exists in the Columbia Basin Project area to develop a road net which incorporates a maximum degree of economy, safety, and service adequacy. The proposals of this report are directed toward those ends, and they promise to yield substantial benefits not only to the settlers and to the counties in which the project lies, but also to the State.

Two main elements of the road net have been recognized—State highways of both primary and secondary grade, and county, or tertiary roads. Routes are proposed for a network of State highways. For tertiary roads, however, the preparation of specific plans must await final conclusions with respect to canal locations, sizes of farm units and other items to which the network of lesser roads should be adjusted. Accordingly, consideration of the tertiary system in the report is limited to the development of principles for use in the road layout, the experimental application of the principles, and the formulation of procedures.

The Columbia Basin Project Act of March 10, 1943, provides a device for establishing the road net found desirable. In conformance with the act, plats of all farm units for each irrigation block will be prepared by the Secretary of the Interior before water is delivered. The farm units will be adjusted in size to land productivity and other considerations, and in shape will be adjusted to topographic conditions, wherever necessary, without regard for section lines. In the plats, reservation will be made for road rights-of-way to assure access to each farm

unit. The conduct of this work by the Bureau of Reclamation, acting for the Secretary, will necessitate close cooperation between it, the State Highway Department, and the county road commissioners.

The proposed network of State highways is presented in figure 1 (page 6) and the accompanying discussion, and need not be reviewed here. The locations there indicated for new State highways are general and tentative. Specific, detailed locations will require further study. It is concluded that the general routes shown not only will serve adequately the needs of the project area, but also will improve materially existing routes of cross-state travel. It is further concluded that construction of new elements of the system, as required, can be financed with current motor vehicle revenues.

It is therefore recommended:

1. That the proposed network of State highways be adopted as the plan for such highways in the project area;
2. That prior to the preparation of the farm plat for any block through or adjacent to which the route of a proposed State highway passes, the Bureau of Reclamation advise the State Department of Highways, and that, cooperatively, decision be reached by them as to the best specific location for the highway through the area in question; and
3. That right-of-way in such locations be reserved in the plats.

In the development of the tertiary road system, economy can be attained in several ways. One way is to

minimize the number of crossings over large canals. A second is to minimize the total road mileage.

A basic means of minimizing road mileage without sacrificing travel convenience is to make the farm units relatively deep and to give them narrow frontages on roads which are parallel, or as nearly parallel as topographic considerations permit. This would make for a maximum number of farmsteads per mile of road, thus minimizing not only the road mileage, but also the mileage and cost of services utilizing or following the roads. Farm units with depths of from two to four times their widths have been recommended by other investigators. Depths in rods to achieve the desired ratios, and the resultant distances between roads each serving two tiers of units, are dependent on farm size, which will vary greatly by class of land. Maximum economy will be attained by adjusting the spacing between these roads, termed principal service roads, in accordance with size of farm by class of land in the manner presented in the report, which will yield farm units of the recommended shapes.

If, as proposed, the maximum practicable number of farms are given frontage on the principal service roads, then the number and the mileage of crossroads may be held to a minimum. Such crossroads would serve only for circulation between different parts of the rural area and without creating significant inconveniences they could be placed at two, and preferably three, mile intervals.

In the interest of convenience, the principal service roads should be oriented towards the towns which will be

the service centers for the farm areas. In the same interest, the use of occasional diagonal roads leading directly to the towns and picking up traffic from the principal service roads will be desirable.

Safety will be promoted by minimizing the number of points of access to State highways. A primary means of achieving access at a limited number of points will be to parallel the State highways at a farm's depth with principal service roads, so that access from farm units bordering State highways will be onto principal service roads rather than main thoroughfares. Safety likewise will be served by avoiding offsets and frequent sharp changes in the alignment of roads.

Application of these principles to a tract of about 50 square miles resulted in an average of only 1.45 miles of tertiary road per square mile of area. The tract selected presents highly favorable conditions for road development along the lines suggested, and the results cannot be accepted as representative of those to be expected for the project as a whole. Nevertheless, the figure of 1.45 miles per square mile is far below the comparable mileage in areas of similar topography where the county road system has developed in the traditional manner along section and half section lines. In parts of the Boise Project investigated the comparable figure ranges from 2 to 3 miles per square mile, and in portions of the Yakima Project it reaches 4 miles per square mile. With estimated road costs of \$2,750 per mile, the prospective savings through adoption of the principles indicated range from \$1,500 to more than \$4,000 of road investment per

square mile. Savings in maintenance and in services utilizing or following the roads should be proportional.

In view of these considerations, it is recommended that the principles noted above and elaborated in the report be applied to the maximum practicable extent in laying out the tertiary road system.

The mutual adjustment of numerous items will be needed in the development of the tertiary road system. The locations of the larger canals, the towns, railroads, State highways, and improved county roads will present fixed lines and points to which the tertiary roads should be adjusted. Considerable adjustment will be possible, however, in the boundaries of most farm units. In establishing units which may be leveled and irrigated with maximum economy, the traditional land survey subdivision lines will not be utilized as farm boundaries in large portions of the project area. Hence, a tentative road layout adjusted to the items noted above will serve, in turn, as a framework for adjustment of the farm units.

It is accordingly recommended that there be prepared a tentative plan for tertiary roads after the locations of principal canals, State highways, towns, and the like have been established, but before the farm unit plat for an irrigation block is prepared. The tentative road plan will serve as a guide in the preparation of the farm unit plat and may be modified, if necessary, to meet requirements imposed by problems of developing farm units of shapes and sizes convenient for irrigation.

The county road commissioners should participate in the layout of the tertiary road system, and their counsel

and approval should be solicited at appropriate stages in the work.

Chapter I

NEED AND OPPORTUNITY FOR PLANNING

It has long been recognized that a maximum degree of economy, safety, and service adequacy could be achieved if the road system for an irrigated area were as carefully planned as the irrigation system. The Columbia Basin presents an unusual opportunity for such planning, which will yield substantial benefits to the State, to the counties in which the project lies, and to the settlers.

Both the State and the counties, or road districts of the counties, build and maintain roads. Primary State highways are largely intended to serve the requirements of traffic between major centers and between intensively developed sections of the State, and to provide connection with the systems of adjoining States. Secondary State highways link the primary routes and interconnect areas and centers of somewhat less intensive development. Within well populated areas, both grades of State highway carry a heavy volume of local traffic. County roads are primarily of local significance. They are designed to carry the differing, but relatively light, volumes of traffic involved in farm-to-town and inter-village movement. Roads of all three types will be required to serve the Columbia Basin Project area.

The project area lies between the two major portions of the State now most heavily populated. The project is about 80 miles long, from north to south, and from 30 to 60 miles wide. Hence, with appropriate planning, many

segments of a State highway network needed to interconnect portions of the project area will also improve connections between adjacent parts of the State. Particularly important in this respect are the opportunities for better connections between the northeastern and southwestern parts of the State and for a better north-south route through the center of the State. Although a number of direct east-west primary routes cross central Washington, northeast-southwest routes, via good paved highways, from the Spokane area to the Yakima Valley and the lower Columbia River area are at present circuitous. The same is true for improved routes from north to south through the center of the State. Both could be improved materially by additional State highways through the project area.

The advance planning of highways in the project area also can be of profit to residents of the State in ways other than through the convenience and economy of more direct cross-state primary routes. Lands of the project area now are largely undeveloped and relatively low in value. By planning routes in advance, and by acquiring needed rights-of-way before high values are added by development, not only can the most desirable routes be secured, but substantial savings can be realized in the costs for right-of-way. With effective planning, moreover, protection can be provided to assure that the primary highways remain the safe, attractive routes of heavy, fast traffic for which they are intended, and for which local residents as well as cross-state travelers will have need.

Without careful planning, the mileage of county roads developed over a period of years to serve an irrigated area tends to become needlessly great. This has been unavoidable in many instances, because the shapes and sizes of farm units, rather rigidly adjusted to the boundaries of legal sections and their subdivisions, have necessitated numerous roads to provide access to each property. Moreover, the orientation of the roads thus developed has not always been the most advantageous which could have been arranged.

The problem was not acute in the past when unimproved roads of comparatively low cost adequately served the needs of horsedrawn vehicles. With increasing need for improved, hard surface roads to meet the demands of automobiles and trucks, however, the expense of constructing and maintaining an adequate system of county roads has tended to place an increasingly larger tax burden on county residents.

Settlers in the Columbia Basin Project will be faced with numerous heavy expenses and will require every possible saving in outlay to help insure their success. Studies presented subsequently indicate that the use of entirely workable plans for farm and road layouts will permit the establishment of county road systems in the Columbia Basin with total road mileage of from 50 to 75 percent of that in the Boise Project area, and of only 40 percent of the mileage prevailing in portions of the Yakima Valley. In addition to the savings in taxes, residents of the project area would be greatly benefited by the safety and convenience of a county road system care-

fully planned in relation to trade centers and the State highway system.

The general lack of a well developed road system in the Columbia Basin presents an unusual opportunity to achieve these several benefits. Means for assisting in their achievement are provided by the Columbia Basin Project Act of March 10, 1943.

In conformance with the act, plats of all farm units in each irrigation block will be prepared before water is delivered. The sizes of the units will be those found necessary for the support of a farm family. In shape, the units will be adjusted wherever necessary to topographic conditions, without regard for section lines, so that the most efficient units will be established from the standpoint of irrigation and other farm operations. In connection with the farm plats, reservations can be indicated for roads rights-of-way to assure access to each unit. Hence, the act provides the means for carrying into effect the major features of a planned system of State and county roads.

The purposes of this report, therefore, become: (1) To design, in as much detail as practicable, a road system for the project area which will achieve the desired ends; and (2) to indicate subsequent steps needed to carry plans into effect by the means which the farm plats provide.

Chapter II

THE RECOMMENDED STATE HIGHWAY SYSTEM

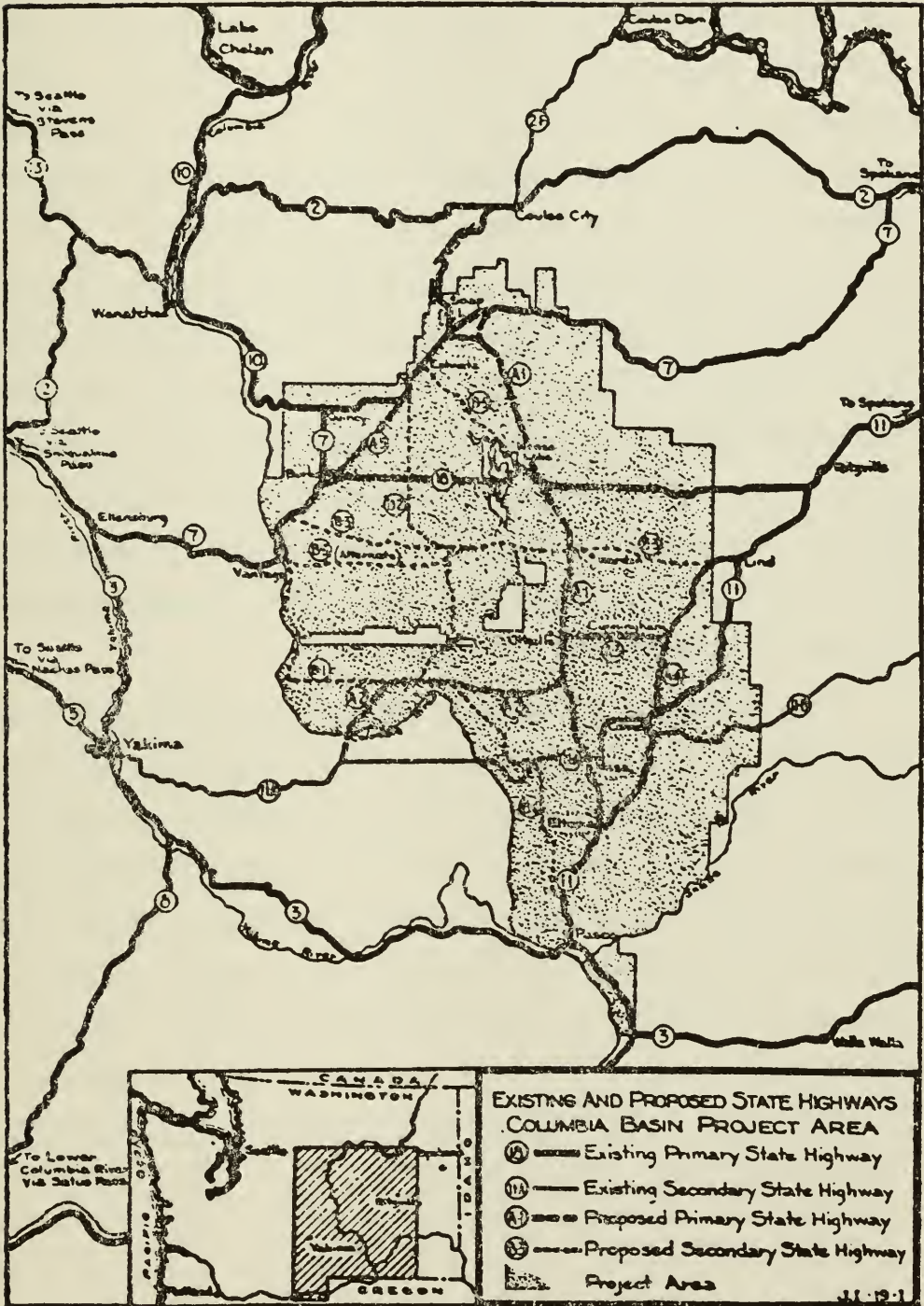


FIGURE 1

General Character of the System^①

Existing and proposed State highways, which together constitute the recommended State highway system for the project area, are presented in figure 1.^② The indicated routes for new highways are tentative. Their final location will depend on detailed surveys and settlement plans not now available. The general outlines of the proposed system, however, are well defined.

In broad outline, the system forms a gridiron pattern composed of north-south and east-west routes spaced from 10 to 15 miles apart. It is apparent that some of the highways will serve admirably to provide shorter cross-state routes, through connections with other State highways beyond the borders of the project. As a whole, the system will clearly afford convenient circulation from one part of the project to another.

The five existing State highways in the project area are parts of cross-state routes. Most important in east-west travel across the central part of the State are the two primary State highways 7 and 18. From the west, the former enters the project upstream from the bridge over the Columbia River at Vantage, runs north to Quincy and thence eastward along the northern edge of the irrigable area through Ephrata and Soap Lake to Spokane.

① The materials in this chapter, including the proposals for State highways, are taken from: *A Report of the Director of Highways Based Upon a Survey, Investigation and Reconnaissance Concerning Present and Future Requirements for the Establishment of Public Highways Serving Areas Which May Be Reclaimed Through the Operation of Grand Coulee Dam*. The report was prepared at request of the State Legislature, and submitted by James A. Davis, acting director, Department of Highways, on April 1, 1941, to Investigators of Problem 19, Columbia Basin Joint Investigations, as a partial answer to that problem.

② The proposed system is presented in small scale in figure 1.

At Quincy, Primary State Highway 7 is joined by Primary State Highway 10, from the Wenatchee Valley. From a junction with Primary State Highway 7 about 10 miles south of Quincy, Primary State Highway 18 leads eastward through Moses Lake to the Spokane area. Another east-west route of secondary grade (Secondary State Highway 11-A and 11-B) running between Yakima and Colfax, traverses the south central part of the project. The fifth existing highway of primary grade (Primary State Highway 11) crosses the southeastern part of the project area and affords connections between the southwestern and northeastern portions of the State.

Of the 10 additional State highways proposed, 5 are of primary and 5 of secondary grade. Three of the primary highways, following routes designated as A-1 to A-3 in figure 1, will be parts of additional cross-state routes. The other two—A-4 and A-5—involve realignment or extension of established highways. Route A-1 will be followed by a new highway running north-south from Soap Lake to Pasco. Routes A-2 and A-3 in combination will provide a much more direct east-west route than now exists between the Spokane area and the middle Yakima Valley, and thence to the Puget Sound area via Naches Pass or to the lower Columbia River area via Satus Pass. Route A-4 is proposed chiefly as an improved alignment for a part of Primary State Highway 11, and route A-5 will shorten the present distance across the project area via Primary State Highway 7. The five secondary highways, following routes designated as B-1 to B-5, are designed as links between the primary highways

and to serve and interconnect the main bodies of irrigable land.

The total length of the proposed system for the project area is 693 miles, 462 miles of which are of primary grade, and 231 of secondary. Existing highways make up nearly half of the total (329 miles), and more than half of the mileage of primary highways (292). Additions, then, will involve the construction of 170 miles of primary highway and 194 miles of secondary highway.

Justification for construction of this system lies in the fact that its daily average use is expected to total 1,207,550 vehicle miles. This is equivalent to 1,598 vehicles per day over the entire system. These estimates suggest that the highways in the Columbia Basin will be much more heavily traveled than those in Yakima County, where 766 vehicles per day were found to pass over primary State highways in 1936, and 320 over secondary State highways.

Determination of the number and location of the new highways involved four broad considerations: (1) The integration of the highways with the existing State network; (2) the character and requirements of the several portions of the project area; (3) sound standards of highway engineering; and (4) financial requirements and limitations. The first has been briefly indicated and the others are discussed below.

New Routes in Detail

The importance of local requirements and local use of State highways under conditions similar to those anticipated in the Columbia Basin was revealed by a survey

of highway use in the Yakima Valley.^⑨ Findings of that survey indicate the need for adjusting State routes to serve local traffic. The survey also provided data used in estimating prospective highway traffic in the Columbia Basin.

The significance of local traffic is apparent in the fact that 75 percent of the State highway users in the Yakima Valley, on a typical day, reported trips involving no more than 8 miles of travel, one way (table 1). Only 2 percent made trips of one-way length in excess of 50 miles. For all highway users, 74 percent of travel through rural areas was over State highways. Hence, local traffic accounted for a very large proportion of the movement over State highways.

⑨ The work in the Yakima Valley was a part of a Statewide highway planning survey undertaken in 1936 by the State Department of Highways in cooperation with the U. S. Public Roads Administration.

**Table 1.—Yakima County interviews concerning
road use (all vehicles)**

One-way trip length	Percent	Accumula- tive ^① percent	One-way trip-length	Percent	Accumula- tive ^① percent
1	11.65	11.65	27	0.03	95.13
2	15.40	27.05	28	0.12	95.25
3	14.71	41.76	29	0.05	95.30
4	11.80	53.56	30	0.37	95.67
5	9.96	63.52	31	0.03	95.70
6	3.45	66.97	32	0.11	95.81
7	4.68	71.65	33	0.11	95.92
8	3.59	75.24	34	0.13	96.05
9	2.48	77.72	35	0.16	96.21
10	3.70	81.42	36	0.44	96.65
11	0.89	82.31	37	0.17	96.82
12	2.90	85.21	38	0.11	96.93
13	0.52	85.73	39	0.04	96.97
14	1.46	87.19	40	0.23	97.20
15	2.01	89.20	41	0.07	97.27
16	1.29	90.49	42	0.04	97.31
17	0.40	90.89	43	0.12	97.43
18	0.82	91.71	44	0.11	97.54
19	0.23	91.94	45	0.07	97.61
20	1.15	93.09	46	0.04	97.65
21	0.26	93.35	47	0.02	97.67
22	0.15	93.50	48	0.03	97.70
23	0.44	93.94	49	0.02	97.72
24	0.30	94.24	50	0.24	97.96
25	0.62	94.86	50-100	0.73	98.69
26	0.24	95.10	100-200	0.95	99.64
			200-300	0.36	100.00

^① Percentages by trip length.

Forecasts have been made of the traffic which will pass over the proposed system when the Columbia Basin Project is fully developed. The local, rural traffic was estimated with the use of the prospective number of farm families tributary to each route, in combination with the expectable ratio of vehicles per family, the average number of trips, and their average length. The estimated number of families was based on the assumptions that there would be one family per farm and that the average size of farm would be 40 acres.^④ It was also assumed that special conditions in the Basin promise to encourage a somewhat greater amount of travel than prevails in the Yakima Valley, and consequently that the one-way trip of the farmer in the Basin is more likely to average 10 miles than 8 miles as in the Yakima Valley. To figures for local, rural traffic obtained by use of these assumptions were added estimates of traffic contributed by local urban populations and by people living beyond the limits of the project area. The bases for the latter were available from traffic counts for highways in comparable areas and for current travel over existing highways in and bordering the project area.

Primary Routes

Route A-1, a primary element in the plan, will add to the cross-state highway system a route extending north

^④ As a result of the early use of this estimate, before studies of desirable farm size had been advanced, the estimates of prospective traffic are probably somewhat high. The probable sizes of farm units will average about 50 acres on class 1 land, 80 acres on class 2 land, and 100 or more acres on class 3 land, and the average for the project will be close to 60 acres. This average size of about 60 acres, however, is only for full-time farms. Its use alone in the estimates would leave out of consideration the residents of part-time farms, of which considerable numbers are to be expected. Moreover, rural farm traffic is only a part of the total included in the estimates.

and south through the project area. It will run from Primary State Highway 11 near Eltopia, 15 miles north of Pasco, to Primary State Highway 7 near Soap Lake. Throughout its 74.6-mile course the new highway will closely parallel or pass through large bodies of high quality land. These lands, it is expected, will support 8 to 10 farm families, or 32-40 people per square mile, a rather high density of farm population. With short extensions the route also will serve to connect the six villages of Adrian, Soap Lake, Moses Lake, Warden, Othello and Mesa. The combined population of these places when the project is fully developed probably will equal and may exceed the rural farm population served by the highway. Hence, there will be considerable local traffic over the highway originating in towns as well as on farms.

The estimates of traffic volume differ from section to section of the proposed route, and from season to season, but on the whole the volume promises to be great. The average maximum number of vehicles expected on the highway daily is 3,200 and the minimum, 1,800. The average number daily for all seasons and sections is estimated at 2,010 vehicles. Total vehicle miles per day probably will average 150,000.

Although these estimates of traffic and others presented subsequently are somewhat high, in that, as noted above, the early estimate for number of farm families which was used is greater than that now in prospect, this fact does not greatly impair the utility of the traffic data. They indicate the relative amounts of traffic to be expected on different parts of the system and provide a relative index to the gasoline tax revenues that can be fairly

allocated for the construction, maintenance and depreciation of parts of the system. When viewed in comparison with the much lower use of State highways in the Yakima Valley, the estimates appear to justify amply the proposed system in the Basin.

The importance of routes A-2 and A-3 as part of an improved route between the northeastern and southwestern parts of the State has been noted. These two routes, together, traverse the project area from the Columbia River on the southwest, at a point just below Priest Rapids, to Othello and Cunningham on the east. For the greater part of the way, the routes pass through lands of the best class, on which it is expected there will be about 10 farm families per square mile. Route A-3 will provide good connections between the towns of Othello and Cunningham, and route A-2 will serve towns expected to develop on the Wahluke Slope. The latter route involves a much needed highway bridge across the Columbia River, which will permit more direct connections than are now available with the Yakima Valley and major coastal points west and southwest of it.

Estimates of average traffic volume over routes A-2 and A-3 are quite similar, but the estimated range in volume differs considerably. On A-2, the maximum traffic is expected to be about 3,400 vehicles per day and the minimum 1,808; whereas the comparable figures for A-3 are, respectively, 2,240 and 1,700 vehicles. The average daily number is estimated at 1,974 vehicles for A-2, however, and at 1,810, only 164 less, for A-3. Average total vehicle miles per day are estimated at 75,000 for A-2 and 28,000 for A-3. The prospective traffic on both routes

(averaging 1,974 and 1,810 vehicles, respectively) substantially exceeds the average of 1,050 vehicles per day found on primary State highways in the Yakima Valley.

Route A-4, proposed chiefly as a relocation and improvement of P. S. H. 11, extends from Connell northward through the villages of Hatton and Cunningham to Lind. The local significance of the route lies in the fact that it will connect three project area towns and serve a considerable area of class 1 land where high population densities (up to 10 farm families per square mile) are to be expected. The new route also is an improvement over that of P. S. H. 11 in that grades are reduced between Connell and Lind.

Since the new route is a part of P. S. H. 11, running from Pasco to Spokane, it is expected to carry a heavy volume of traffic. Estimates of daily movement range from 3,000 to 2,000 vehicles. Total vehicle miles per day are estimated to be 73,600. The average traffic would be 2,830 vehicles per day—more than twice the 1936 volume passing over primary highway in Yakima County.

Route A-5 is designed to shorten the route now followed by P. S. H. 7 from its junction with P. S. H. 18 near Burke to Ephrata, county seat of Grant County. For the most part, this cut-off traverses project lands of the poorest class, which are recommended for development as irrigated community pastures or for delayed development. In consequence, population tributary to it will be inconsiderable and the traffic rather light. The total daily vehicle mileage on the route is estimated at 18,100 and the average daily number of vehicles at 1,200.

These proposed primary highways, it should be apparent from the foregoing discussion, are of statewide significance. They provide either additions to or improvements of the principal arteries. In contrast, the secondary routes are chiefly of local significance.

DEPARTMENT OF HIGHWAYS

JAS. A. DAVIS, *Acting Director*
Transportation Building, Olympia

April 1, 1941

To: Investigators of Problem No. 19, Columbia Basin
Joint Investigations

From: Jas. A. Davis, Acting Director, Department of
Highways

Subject: Report on Proposed State Highway System for
the Columbia Basin Project Area

Problem No. 19, of the Columbia Basin Joint Investigations reads as follows: To plan desirable additions to and modifications of the road net in adjustment to the irrigation system, village sites and patterns, farm hamlets, and other features, and to prospective transportation needs.

This report is presented, not as an answer to Problem No. 19, but as a contribution to the study of that problem. The report has been prepared at the request of the State Legislature; it is presented here in essentially the form prepared for purposes of the legislature.

For purposes of this report to the legislature, it was necessary to make numerous assumptions, set forth in the report, which were based upon the best information available at the time. It is recognized that material developed

in the course of the Joint Investigations since preparation of the report, and additional information shortly to be made available, may make desirable some modifications of the proposed network.

The report presents only a proposed framework of primary and secondary state highways. For the purposes of Problem No. 19, it will be necessary, not only to consider carefully this major framework in the light of all relevant materials developed in the Joint Investigations, but also to consider the supplementary system of lesser roads.

Very truly yours,

JAS. A. DAVIS

Acting Director of Highways

JAD:PO

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Enc.

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A REPORT OF THE DIRECTOR OF HIGHWAYS
BASED UPON A SURVEY, INVESTIGATION AND
RECONNAISSANCE CONCERNING PRESENT AND
FUTURE REQUIREMENTS FOR THE ESTABLISH-
MENT OF PUBLIC HIGHWAYS SERVING AREAS
WHICH MAY BE RECLAIMED THROUGH THE OPER-
ATION OF GRAND COULEE DAM.

SUMMARY OF CONCLUSIONS

The following general conclusions are presented at the beginning of this report so that the principal items of immediate concern may be readily ascertained:

1. Inasmuch as water will not be available for irrigation before 1944, it will undoubtedly be several years before it will be necessary to construct any new roads in the area. The existing highways are adequate for present needs and so far as circumstances are predictable for several years in the future.
2. The department should be authorized to continue to cooperate in the studies being made by the many agencies concerned with the various aspects of development of the area. This is important in order that the highway plan may be coordinated with plans for development of cities, recreational areas, industrial sites, irrigation canals, rural population development, railroads and all other factors having a direct influence on the location and design of highways.
3. The studies indicate that the state highway system within the area will be eventually self-supporting from motor vehicle revenues if built only as their construction is required by actual settlement of the area. In

other words, it would be impossible with present revenues to construct the entire system in a period of two or three years; otherwise all other state highway improvement within the state would be at a standstill. If the development of the highway system is coordinated with the rural population development in the area, then the system can probably be constructed in stages so that too great a burden will not be imposed in any biennial period.

4. Studies indicate that it will be impossible for the county road or land service system of feeder roads to be constructed with existing county revenues. It is our opinion that proper provision should be made in the development of the area for Federal assistance in the development of the feeder roads or that property pay its proper share of the cost of construction of the county road system.
5. As plans for the development of the area become more definite, it is advisable that provision be made for rights of way for highway purposes and made available for improvement before cost of the land causes the cost of right of way to become prohibitive.

METHOD OF APPROACH IN SELECTION AND DETERMINATION OF REQUIRED HIGHWAY SYSTEM

Introduction:

In approaching the study of the probable highway requirements of the area, it was necessary to take into account all of the plans thus far developed by the Federal agencies for the ultimate development of the area. It was essential that a system be considered that would serve the completed project and at the same time provide roads that could be developed as the several areas within the reclamation project are placed under water. It is difficult to arrive at precise final conclusions since there are many factors influencing highway use and necessity yet to be determined by related studies. These studies at the present time are being conducted by various committees under the direction of a Federal coordinator, and as the results of these studies become available, adjustments in the suggested highway plan must necessarily be made.

All data now available concerning those factors which influence travel have been procured. Consideration has been given to the potential rural population and its distribution, probable community centers, industrial sites, rail and water connections, recreational areas, tourist travel and other pertinent factors. After consideration of the best available data concerning all of the foregoing, a tentative system of primary and secondary highways to serve the projected development has been selected. The detailed location of feeder and land service roads cannot be made until a final plan for the development of the farm units has been made by other agencies.

Method Followed in Estimating Total Highway Travel:

The general approach to the location and service to be rendered by the highway system was as follows: From the Bureau of Reclamation we obtained the location of the areas classified as suitable for cultivation. We also obtained the estimate of the number of farm units to be established in each area by determining the number of acres that would be irrigated and the allocation of acreage to each farm unit. From the number of farm units we were then able to determine from studies of other areas the probable number of vehicles that would be owned and operated by the rural population within the area. By comparing the amount of traffic developed by urban population as related to rural population, we were then able to combine the potential rural travel with potential urban travel and arrive at probable estimates of the ultimate use of the projected highway system. We were not able to locate new cities specifically, but by studies of other areas we were able to determine within reasonable limits the probable location of cities and community trade centers. While we did not specify any exact location of towns, it is believed that a projected highway net can easily be adjusted to serve the towns that undoubtedly will be created within the area.

Size and Number of Farms:

It is estimated that 1,200,000 acres of land will be irrigated. This information has been obtained from the Bureau of Reclamation and is based upon adequate studies of land use. It is anticipated that farm units will average 40 acres in size, including suburban development. While

the units may vary somewhat in size due to topography, and while they may vary in size also because of the probability of establishing smaller units for part-time farming use near projected towns, the average figure of 40 acres is considered adequate for determination of potential travel.

Rural Travel Habits:

During the preceding four years the department has been cooperating with the Public Roads Administration in an extensive Highway Planning Survey conducted for the purpose of procuring for the first time factual information concerning the use of highways. From those studies we have been able to determine many items of value in estimating the potential traffic needs of the Columbia Basin area. By comparison with data obtained from similar areas, we have found that one vehicle will be owned for each farm unit within the area. We have found that average rural population will be 3.7 persons per farm unit. We have also found that in similar areas the urban population will be one and one half times the farm population. Our road use surveys of similar areas indicate that the average one-way trip of the farm vehicle is 7 miles and that the farm vehicle owner makes two such trips each day.

Using this basic information as a guide and having knowledge of the per cent of travel over the state highway system, county road system and city streets by both rural and urban population, we are able to arrive at the total amount of travel to be generated within the area. By having the location of the farm units and the probable

location of cities and community centers as determined by travel habits, we were then able to project a system of primary and secondary highways and to determine the amount of travel on each of the routes.

While the average one-way trip length of rural population in similar irrigated areas is now 7 miles, it is anticipated that because the opportunity is afforded for a complete planning of city locations to serve the rural areas that the average trip length may be increased to 10 miles, and we have used that figure as the basis of potential travel. Well-placed cities will undoubtedly be located to provide the required service to rural development, and at the same time, the number of cities may be less than in existing irrigated sections so that average travel will slightly increase.

Estimates of Travel by Road Systems:

Beginning with the knowledge of the number of rural residents in each area to be irrigated and having knowledge of the travel characteristics, we were able to develop probable traffic estimates on each of the routes selected. The routes selected were chosen so as to serve best the several districts or blocks of area to be placed under irrigation. The exact location of the routes of course had to be determined by topographic conditions affecting the location and design of the highway in order to procure the highest degree of service at the lowest construction cost.

Our surveys indicate that rural residents perform 82 per cent of their travel on rural highways and 18 per cent on city streets. Urban motor vehicle owners travel 45 per

cent on the rural highway system and 55 per cent on city streets.

As a check on the estimated amount of travel within the Columbia Basin area, we have compared our estimates of travel with that existing within the state as a whole. We find that 74 per cent of the total rural highway travel within the area will be over the projected state system. The remainder, or 26 per cent of the travel, will be on the feeder or county road system. Throughout the state as a whole on the existing highway system, we find that 76 per cent of all rural highway travel is on the state primary and secondary highway system and 24 per cent is on the county road system.

The amount of through and tourist travel has been estimated using as a basis the known volumes of tourist travel, also the known volumes of long distance travel by Washington residents. In the attached tables will be found a tabulation showing average trip lengths and the percentage of travel accomplished in the various trip lengths. For instance, it is interesting to note that 90 per cent of all one-way trips in Yakima County are less than 16 miles. This figure is comparable to all other studies within the state as a whole and compares with the studies of other states, indicating that a much higher percentage of travel over the rural highway system is accomplished by local residents traveling relatively short distances than would be generally anticipated.

Engineering Problems Involved:

A thorough investigation of the engineering aspects of each route was made. This investigation consisted of a

reconnaissance report on each route to determine the approximate desirable location and to provide routes that would best serve the traffic needs at the lowest possible cost. Estimates of cost were prepared from the reconnaissance surveys and the standards of design contemplated are considered to be adequate to serve the ultimate traffic requirement of the area. Descriptions and discussions with estimates of cost of each of the selected routes are included in the report. Included also are maps showing the tentative selection of a system, as well as the potential traffic to be carried by the system.

FINANCIAL CONSIDERATIONS OF THE PROPOSED SYSTEM

State Highway System:

The selected state highway system consists of 364 miles of new highways and 329 miles of the existing system. It is estimated that the projected highway system including the improvements necessary on existing routes will cost approximately \$10,344,000. If traffic volumes develop to the extent contemplated in the ultimate development, the projected state system, including existing routes, will eventually earn annually \$1,850,000 in motor vehicle user revenues. It would indicate that such a system will be entirely solvent and can be constructed and maintained with revenues earned by the system. However, it can be readily seen that the development of the system will have to be spread over a period of years; otherwise it could not be financed with state revenues now available for construction purposes. The existing highway net will adequately serve all traffic demands until

such time as the reclamation project has developed to the point of settlement by rural population, and until that time there will be no necessity for investment of highway funds within the area.

County Road System:

It is estimated that approximately 7,175 miles of county roads will be necessary to serve land development and as feeder roads to the state system. It is estimated that this cost will amount to approximately \$19,780,000. The annual earnings from motor vehicle revenues will amount to approximately \$596,550. If the county road system were completed, it would represent an annual cost for construction and maintenance of \$1,500,000 spread over a period of 30 years, and with anticipated revenues of \$596,550 it is plainly evident that serious consideration will have to be given to the matter of financing county roads through property taxation or Federal assistance. The county road system necessarily serves a much higher degree of benefit to the rural, social and economic development than the state system, including benefits to land development, schools, rural mail delivery, recreational centers, social advantages and other property benefits to an extent that highway users cannot be expected to pay the cost of these facilities. The following tabulations include the reconnaissance reports of the several routes included in the projected system, including tabulations of cost and revenues as well as potential traffic volumes.

PROJECTED PRIMARY HIGHWAYS

Designation

A-1

Beginning in the vicinity of Eltopia on PSH 11, thence in a northerly and northwesterly direction to a connection with PSH 7 in the vicinity of Soap Lake with a wye connection to PSH 7 in the vicinity of Adrian.

A-2

Beginning in the vicinity of Cold Creek on SSH 11-A, thence in a northerly direction to the vicinity of Wahluke (crossing the Columbia River between Coyote Rapids and Priest Rapids), thence in a westerly and northerly direction to a connection with Highway A-1 approximately 5 miles south of Othello.

A-3

Beginning in the vicinity of Othello on Highway A-1, thence in an easterly direction to a connection with Highway A-4 in the vicinity of Cunningham.

A-4

Beginning in the vicinity of Connell on PSH 11, thence in a northerly direction through Hatton and Cunningham to a connection with PSH 11 at Lind.

A-5

Beginning in the vicinity of Burke on PSH 7, thence in a northeasterly direction to a connection with PSH 7 approximately 5 miles south of Ephrata.

LENGTH AND TRAFFIC VOLUMES ON PROJECTED STATE HIGHWAYS

	Designation	Miles	Average Daily Traffic	Vehicle Miles
PRIMARY				
A-1	Eltopia to Soap Lake....	74.6	2010	150,000
A-2	Cold Creek to Othello...	38.0	1974	75,000
A-3	Othello to Cunningham..	15.9	1810	28,800
A-4	Connell to Lind.....	26.0	2830	73,600
A-5	Burke to Ephrata.....	15.1	1200	18,100
	TOTAL	169.6	2037	345,500

Route A-1

This north and south routing begins at Eltopia on PSH 11, 17 miles north of the junction of PSH 3 and PSH 11 at Pasco. PSH 3 serves the Yakima Valley Reclamation Projects, the Walla Walla and Palouse country. Pasco, in all probabilities, will be the head of navigation on the Columbia River for some time to come and is served by the Northern Pacific, S. P. & S., and Union Pacific Railroads and will be one of the most important distributing centers in the Basin Area.

This line will serve five east and west routes and passes near towns of promising outlook, such as SSH 11-A near Mesa, A-3 near Othello, B-3 near Warden, PSH 18 near Moses Lake and PSH 7 at Soap Lake and Adrian, and will be an important section of the shortest, most direct and feasible route between Pasco and Grand Coulee Dam, also serving the richest parts of the eastern portion of the Basin Area and will serve as the best route between Eastern British Columbia and Eastern Oregon.

This route is 74.6 miles in length with an estimated cost of \$1,737,000.00.

The selected standard calls for 150-foot minimum width of right of way, with a roadbed width of 36 feet, 22-foot bituminous surface with 7-foot shoulders, and the normal standard of curvature and gradient are set at 3° maximum for curves and 5 per cent maximum for grades.

The sections involved and the estimated length and cost of each are as follows:

	Miles	Cost per Mile	Cost	Total Cost
PSH 11 Eltopia to				
Othello	26.0	at \$23,000	\$590,000	
Othello to PSH 18..	19.0	20,000	380,000	
PSH 18 to PSH 7				
at Soap Lake....	26.0	20,000	520,000	
"Y" Connection at				
Adrian	3.6	20,000	72,000	
Four Grade Separations			175,000	\$1,737,000

PSH 11 Add 2 Lanes

Pasco to Eltopia.	17	17,000	\$289,000	
TOTAL	74.6			\$2,026,000

The estimated traffic volumes (yearly daily average) varies considerably, having a maximum of 3,200 vehicles to a minimum of 1,800 vehicles with an estimated 150,000 vehicle miles, averaging 2,010 vehicles per day.

This route joining PSH 11 will necessitate the improvement of PSH 11, which is now a two-lane highway, from Eltopia to Pasco, to a four-lane highway as the

estimated traffic volumes will range from a minimum of 4,800 to a maximum of 7,310 vehicles per day between the above towns.

Route A-2

This route serves as the most feasible outlet for the major portion of the Basin Area to a connection with PSH 5 over Chinook Pass and White Pass leading to Southwest Washington, to PSH 8 leading to the industrial area of Vancouver and Portland, and also serves as a portion of the most feasible route from Spokane to Yakima. This highway will give a connection with the C. M. St. P. & P. Railroad branch line at Riverland on the south bank of the Columbia River for railroad shipment of products originating from 120,000 acres to be irrigated on the Wahluke slope located on the north side of the Columbia River.

The selected standard calls for 150-foot minimum width of right of way, a roadbed width of 36 feet, 22-foot bituminous type surface with 7-foot shoulders. The normal standard of curvature and gradient are set at maximum 3° for curves and $5\frac{1}{2}$ per cent for grades, with the exception of the 6-mile section over the Saddle Mountains where a concession to topography to avoid excessive costs was made and a maximum of 7° for curvature was set.

This route is 38 miles in length with an estimated cost of \$1,555,000.00 which includes the estimated cost of \$850,000.00 for the construction of a bridge over the Columbia River. The sections involved and the estimated length and cost of each are as follows:

A-2	Designation	Section Length	Cost Per Mile	Cost
	Cold Creek to Columbia River	6.0	\$25,000	\$150,000
	Columbia River Bridge and Approaches	1.0		850,000
	Columbia River Bridge No., 2 mi.	2.0	30,000	60,000
	2 mi. North of River to Saddle Mountains	23.0	17,000	391,000
	2 mi. over Saddle Mountains.	2.0	20,000	40,000
	4 mi. to Connection of N. & S. Highway South of Othello.	4.0	16,000	64,000
	TOTAL	38.0		\$1,555,000

The estimated traffic volumes (yearly daily average) varies from a maximum of 3,400 vehicles to a minimum of 1,800 vehicles, averaging 1,974 vehicles per day with an estimated 75,000 vehicle miles.

This route joining SSH 11-A will necessitate the improvement of SSH 11-A from Cold Creek to a connection with PSH 3 in the Yakima Valley to primary highway standards of the same set for A-2.

Route A-3

This route serves as a connecting link between Highways A-1 and A-4, forming a portion of the direct routing from Spokane to Yakima and points in Southwest Washington. It also accommodates traffic leading to and from towns of promising outlook with railroad facilities; Othello, situated in a rich agricultural area and served by the main line of the C. M. St. P. & P. Railway, and Cunning-

ham, served by the main line of the Northern Pacific Railway.

The selected standard calls for 150-foot minimum width of right of way, a roadbed width of 36 feet, 22-foot bituminous type surface with 7-foot shoulders. The normal standard of curvature and gradient are set at maximum 6° for curves and 5 per cent for grades.

This route is 15.9 miles in length with an estimated cost of \$254,000.00 and an average cost of \$16,000.00 per mile.

